

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO.  
AMD-04-029

WILLIE MITCHELL,  
SHELTON HARRIS,  
SHELLY WAYNE MARTIN,  
SHAWN GARDNER,

Defendants

VOLUME XII OF XXXVII  
Wednesday, October 8, 2008  
Baltimore, Maryland

Before: Honorable Andre M. Davis, Judge  
And a Jury

Appearances:

On Behalf of the Government:  
Robert Harding, Esquire  
Michael Hanlon, Esquire  
On Behalf of Defendant Mitchell:  
Laura Kelsey Rhodes, Esquire  
Michael E. Lawlor, Esquire  
On Behalf of Defendant Harris:  
Gerard P. Martin, Esquire  
Paul Flannery, Esquire  
On Behalf of Defendant Martin:  
Thomas L. Crowe, Esquire  
James G. Pyne, Esquire  
On Behalf of Defendant Gardner:  
Adam H. Kurland, Esquire  
Barry Coburn, Esquire

Reported by:  
Mary M. Zajac, RPR  
Room 5515, U.S. Courthouse  
101 West Lombard Street  
Baltimore, Maryland 21201

1 (Proceedings at 9:35 a.m.)

2 THE COURT: We ready to proceed?

3 MR. HARDING: Yes, Your Honor.

4 THE COURT: Who are you calling, Mr. Hanlon?

5 MR. HARDING: Kelly David, Your Honor.

6 THE COURT: Kelly David and then Ms. Smith?

7 MR. HARDING: Yes.

8 THE COURT: All right. We'll have the jury, please.

9 Counsel, I received a letter from one of the jurors, which I will  
10 share with you this morning. Mainly the concern is about the  
11 weekend of November 14th, 15th and 16th, which we're not  
12 scheduled to sit. So it's no concern.

13 MR. HANLON: Your Honor, would the Court like us to  
14 bring out the witness?

15 THE COURT: Yes. If you could just bring her in, sure.

16 MR. HANLON: It will be Kelly David.

17 THE COURT: Why don't we wait until the jury comes?

18 MR. HANLON: Certainly.

19 (Jury enters the courtroom.)

20 THE COURT: Ladies and gentlemen, good morning. We're  
21 ready to proceed. Once again, we will interrupt a witness so  
22 that we can accommodate the needs and schedules of a couple of  
23 other witnesses. Mr. Montgomery will be back with us this  
24 morning. But for now we're going to have two additional  
25 witnesses. Mr. Hanlon, your next witness.

1 MR. HANLON: Thank you, Your Honor. The United States  
2 calls Kelly David to the stand.

3 THE COURT: All right.

4 MR. HANLON: And the witness is on the way out.

5 KELLY DAVID, GOVERNMENT'S WITNESS, SWORN

6 THE WITNESS: I do.

7 THE CLERK: Be seated. Speak directly toward the mike.  
8 State your name and spell it for the record, please.

9 THE WITNESS: My name is Kelly David. K-E-L-L-Y.  
10 D-A-V-I-D.

11 DIRECT EXAMINATION

12 BY MR. HANLON:

13 Q Ms. David, good morning to you.

14 A Good morning.

15 Q How old are you, ma'am?

16 A 35.

17 Q And do you currently live in Baltimore County, Maryland?

18 A No, I don't.

19 Q Where do you live? What locality do you live in?

20 A Baltimore City.

21 Q And did you grow up in the Baltimore area?

22 A Yes.

23 Q What do you do for a living?

24 A Safety and security.

25 Q And how long have you been out of school? Just a ballpark.

1 A A really long time.

2 Q I shouldn't have asked that, Ms. David. I'm sorry. How far  
3 did you go in school?

4 A Twelfth grade.

5 Q I won't ask you when you were in 12th grade. We've moved  
6 past that now.

7 Let me direct your attention. Do you have any  
8 children?

9 A Yes.

10 Q And how many children do you have?

11 A Two.

12 Q And boys, girls?

13 A Boy and a girl.

14 Q And how old are they?

15 A 18 and 16.

16 Q Now, let me direct your attention to a few years back, June  
17 7th of 2002. Do you remember that particular day?

18 A Yes, sir.

19 Q Where were you living at that time?

20 A Baltimore County, Bramble Lane.

21 Q Specifically, were you living at 8618 Bramble Lane?

22 A Yes, Apartment 102.

23 Q And that's an apartment building, then?

24 A Yes.

25 Q How long did you live at 8618 Bramble Lane?

1 A Eleven years.

2 Q So quite a while?

3 A Yes.

4 Q And since June 7th of 2002, you've since moved on to another  
5 home, is that right?

6 A Yes.

7 Q On June 7th of 2002, in the afternoon, did you work that  
8 day?

9 A Yes.

10 Q Where were you working at that time?

11 A The YMCA of Central Maryland in Catonsville.

12 Q And what kind of work did you do for the YMCA?

13 A I was Assistant Family Center Director.

14 Q And directing your attention just approximately to around  
15 4:30, 5:00 or thereabouts, is that about when you returned home,  
16 typically?

17 A Yes.

18 Q When you would go home from the YMCA, so you're going from  
19 your office to Bramble Lane, what general route would you take?

20 A I would take South Rolling Road up to Frederick Road. Then  
21 take North Rolling Road all the way up to Windsor Mills Road, up  
22 to Mayfield, and then Carlson Lane, Old Court Road, and then turn  
23 into Bramble Lane.

24 Q There were a number of streets that you mentioned there.  
25 But shortly before you arrived home typically, you would be on

1 something called Carlson Lane?

2 A Yes.

3 Q And Carlson, for our court reporter, is C-A-R-L-S-O-N, is  
4 that right?

5 A Yes.

6 Q Is this a route you took home pretty much every day?

7 A Yes.

8 Q Were you fairly familiar with it?

9 A Yes.

10 Q On this particular day, June 7th of 2002, as you were on  
11 your way home, did you receive a phone call while you were on  
12 Carlson Lane?

13 A Yes.

14 Q I gather this would have been on your cell phone?

15 A Yes.

16 Q Who was the phone call from?

17 A My son.

18 Q And you and your son had a brief conversation that day?

19 A Yes.

20 Q Without getting into what your son told you that day, did  
21 you give any instructions to your son after that phone call?

22 A Yes.

23 Q What did you tell your son to do?

24 A Get your tail in the house right now.

25 Q So there was a reason you wanted your son to get into the

1 house quickly?

2 A Yes.

3 Q And again, after that phone call, did you sort of speed up  
4 to try to get home quicker?

5 A Yes.

6 Q Again, without getting into details, did you receive  
7 information that you were worried about over the phone?

8 A Yes.

9 Q Now, you're on Carlson Lane at that point?

10 A Yes, I am.

11 Q As you're heading up Carlson Lane in the direction you took  
12 to go home, did something happen to you?

13 A Yes.

14 Q What happened?

15 A Two young men ran out in front of my car.

16 Q If you remember, these two young men, at that time had you  
17 ever seen them before? Did you have any idea who they were?

18 A No.

19 Q Was it only two men?

20 A Yes.

21 Q You mentioned that they ran out in front of your car. Were  
22 those your words?

23 A Yes.

24 Q From what direction were they coming, if you could tell?

25 A They came out of the parking lot of Northwest Hospital.

1 Q Your Honor, may I approach witness and put something on the  
2 easel at this point?

3 THE COURT: Yes.

4 MR. HANLON: Try not to trip myself.

5 THE COURT: Yeah. Can we perhaps move that laptop  
6 until it's needed, Mr. Harding? Thank you. So that the cable  
7 isn't -- if you could just put it on your table.

8 MR. HARDING: Could I put the speakers over here to  
9 accomplish the same thing in moving the wires?

10 THE COURT: Okay. All right. Thank you.

11 BY MR. HANLON:

12 Q Is this in an all right position for the easel? I'm  
13 assuming the jury can see it. Now, Ms. David, I've put a big  
14 overhead map up on the easel. For your information, I've put a  
15 few post-it notes on to redact it a little bit for things we'll  
16 use with other witnesses. So you don't need to worry about that  
17 stuff. But this map is marked as Government's Exhibit S-1.

18 Could you tell us, basically, what this area is that's  
19 shown in this photograph?

20 A This --

21 THE COURT: Ms. David, I'm sorry. But because of the  
22 setup of the courtroom, I'm going to need you to speak into the  
23 microphone. And then when you're looking at the map, if you  
24 could just turn back when you need to speak.

25 THE WITNESS: Sure.



1 THE COURT: Thank you.

2 THE WITNESS: The area is the Randallstown area, close  
3 to where I live.

4 MR. HANLON: Your Honor, the mike is working.

5 THE COURT: Okay. Great.

6 BY MR. HANLON:

7 Q Ms. David, would you be comfortable using this?

8 A Sure. That would be fine.

9 Q Why don't you take the mike? Now you're going to be in a  
10 night club singer mode for a few minutes. So this is the, this  
11 area includes your neighborhood and some of the surroundings, is  
12 that right?

13 A Yes, that's correct.

14 Q If you could, it may be obscured by post-its. Could you  
15 circle with your hand where your apartment building was in 2002,  
16 in June?

17 A My apartment building, this is Bramble Lane. The post-its  
18 are kind of sort of in the way. I'm like right over here. Right  
19 over in this area. Actually right over here, where the other  
20 post-it is.

21 Q So it's under one of the post-its?

22 A Yes.

23 Q Now, if you would, if you could indicate with your finger,  
24 what would typically be the route that you would take home to get  
25 home from work?

1 A Okay. I went just kind of straight up Carlson Lane because  
2 where it cuts off at, I would turn from Windsor Mill Road on to  
3 Mayfield, then turn from Mayfield on to Carson Lane. Then come  
4 up straight up Carlson Lane, make the right on Old Court, go up  
5 to Gray Fox, which is pretty much Bramble Lane where the main  
6 entrance is. Go down, go around and go to the back.

7 Q And if you would, again, focusing on Carlson Lane, which  
8 runs up through the middle of the map, would you tell us  
9 approximately wherever you were when you saw these two men run  
10 out in front of your car?

11 A Okay. This is Northwest Hospital right here. This is  
12 Stevenswood. Right here it's the house and then this is the  
13 drive, well, the exit from the hospital. So I'm like right here,  
14 right about here in between the house and where the black steel  
15 fence is that they have separating the hospital from the  
16 residences.

17 Q And for the record, you're indicating with your finger  
18 Carlson Lane just a few, a little bit south of the complex that  
19 you're indicating is Northwest Hospital?

20 A Yes.

21 Q And last question. The direction that you saw these two men  
22 coming from, if you could tell the jury where you saw them coming  
23 from?

24 A Yes. They came from the driveway part out of this way and  
25 came across and cut right in front of my car, because at this

1 point this is where I am.

2 Q All right. I think at this point you can give me the mike  
3 back. You may be seated. We may use it again. Thank you.

4 Now, understanding that you saw right where the men  
5 were coming from, would you have had any way of knowing, Ms.  
6 David, where they'd been prior to that or where they were  
7 ultimately originating from?

8 A No.

9 Q Is that mike not on?

10 A No.

11 Q Now, when the men ran out in front of your car, what  
12 happened?

13 A As soon as they ran out in front of my car, because I had  
14 accelerated due to the phone call that I got from my son, I like  
15 hit one of them.

16 Q When you say that you hit one of them, tell us exactly what  
17 you mean.

18 A The first one, I didn't. The second young man who was  
19 shorter in height, that's the one I hit. Once I did that, I was  
20 like, Oh, my God, I'm getting ready to go to jail. I'm like, Are  
21 you okay? And he just looked and kind of nudged his head and  
22 continued on past me.

23 Q And that was the individual that you feel like you hit a  
24 little bit?

25 A Yes.

1 Q He continued he past you. How about the other one who you  
2 did not hit?

3 A The other young man stopped, which was a taller gentleman.  
4 Just stopped and watched, I guess to make sure if the other  
5 person was okay, and then they both just continued on down  
6 Carlson Lane.

7 Q I'm going to ask you in a moment where, what direction they  
8 took as they continued down Carlson Lane. But let me ask you  
9 about the encounter a little bit. You've already touched on this  
10 a little bit. It was two men, is that right?

11 A Yes.

12 Q Could you tell what their racial or ethnic backgrounds were?

13 A African-American.

14 Q You've indicated that one of them was shorter than the  
15 other?

16 A Yes.

17 Q And was it the shorter or the taller individual that you  
18 feel like you made contact with your vehicle?

19 A The shorter individual.

20 Q And he was the second one?

21 A Yes.

22 Q Now, the taller individual, the other one, never made  
23 contact with your vehicle that you're aware of?

24 A No.

25 Q If you could, describe the contact that the shorter man made

1 with your car. What was the contact?

2 A More of a hands-on bumper type contact.

3 Q So the shorter gentleman actually touched your car with his  
4 hands?

5 A Yes.

6 Q Now, after this, you were surprised by this?

7 A Yes, I was.

8 Q Had you seen these two men coming prior to seeing them in  
9 front of your car?

10 A No.

11 Q You asked them if they were okay?

12 A Yes. The shorter young man, I asked him was he okay.

13 Q Did either the shorter man or the other one say anything in  
14 response?

15 A No.

16 Q Did you say anything else to them?

17 A No.

18 Q Did, did you notice anything about the kind of look that  
19 either of these two men had on their face as you were asking them  
20 if they were okay or as you were looking in their direction?

21 A The shorter young man, which my focus was more on him, he  
22 had a, of course, a surprising look, startled look, pretty much  
23 the same that I had. More like a deer in headlights type look.

24 Q And then they moved on, is that correct?

25 A Yes.

1 Q When they moved on down Carlson Lane, what speed were they  
2 taking? Were they walking, running, trotting?

3 A A very fast, speedy walk.

4 Q And did either of them say anything to you at all prior to  
5 leaving?

6 A No.

7 Q Let me ask you about what they looked like, more or less.  
8 We've talked about their racial background and we've talked about  
9 the fact that they were both men, is that correct?

10 A Yes.

11 Q Let me ask you about the first one who you've described as  
12 the taller individual. Do you have any recollection about what  
13 he was wearing, what his clothing looked like?

14 A Just the light colored shirt, the Tims, the jeans.

15 Q You mentioned a light colored shirt, Tims and jeans?

16 A Yes, Timberland boots. I'm sorry.

17 Q That's fine. That was going to be my question. What does  
18 "Tims" mean?

19 A Timberland boots. Timberland boots.

20 Q Do you remember what the color of the taller man's boots  
21 were?

22 A The butter color. Like the neutral, natural color of Tims,  
23 the tan color.

24 Q Do you remember if the taller man was wearing anything on  
25 his head?

1 A No, I can't remember.

2 Q Do you have a recollection of anything that the shorter man,  
3 the second one, was wearing at that time?

4 A Jeans as well, butter Tims, Timberland boots. His braids,  
5 he had very fine braids.

6 Q The shorter man had very fine braids?

7 A Yes.

8 Q If you would, and I'm not a hairdresser so I want to make  
9 sure that we're clear for the record. What do you mean by  
10 braids?

11 A They're braids that go straight back, straight back braids.  
12 I noticed them because at the time I got my hair braided a lot.  
13 I was like, wow, his hair looks really nice. I wonder who did  
14 his hair.

15 Q And that's something that you've noticed from time to time,  
16 is that right?

17 A Yes.

18 Q In fact, you and I have talked about this case and gone over  
19 these facts a number of times, is that correct?

20 A Yes.

21 Q These braids, Ms. David, is this something that you've often  
22 remembered, a particular detail you remember about this case?

23 A Yes.

24 Q Is that because you liked the braids?

25 A Yes. Because I liked the braids a lot.

1 Q Now, Ms. David, you, at approximately this time, ultimately  
2 there came a time when you had to actually talked to the police  
3 about this encounter on Carlson Lane, is that right?

4 A Yes.

5 Q And just for the record, it's not because you were being  
6 investigated for hitting anybody, is that right?

7 A Yes.

8 Q And you did a written statement for the police that day, is  
9 that correct?

10 A Yes.

11 Q Your Honor, may I approach?

12 THE COURT: Yes.

13 Q Ms. David, if this is okay, I'd like you to take at that for  
14 a minute. And just read to it yourself and tell me if it  
15 refreshes your recollection about whether the taller of men was  
16 wearing anything on his hat, on his head. I'm sorry.

17 A Yes.

18 Q It does refresh your recollection?

19 A Yes.

20 Q With your recollection refreshed, what, if anything, was the  
21 taller man wearing on his head?

22 A A red hat.

23 Q And sitting here today, do you remember seeing the red hat?

24 A Yes.

25 Q Now, after this encounter, about how long are we talking



1 about here? Seconds? Minutes?

2 A Encounter from?

3 Q The time that the men were in front of your car.

4 A From when I wrote this statement?

5 Q No. No. I'm sorry. Let me step back. How long were the  
6 two guys in front of your car? How long did you have to look at  
7 them?

8 A Oh, maybe about a good 15 to 30 seconds.

9 Q And during that time, what was the weather like that day?

10 A It was a nice, sunny day. Bright. Clear.

11 Q No rain on your windshield or anything?

12 A No. No rain.

13 Q Do you wear glasses or anything like that?

14 A Yes.

15 Q I see you're wearing glasses today.

16 A Yes. Yes.

17 Q Were you wearing them at the time?

18 A Yes.

19 Q Was there anything obstructing your view of the two men?

20 Anything obstructing your view of their faces or what they were  
21 wearing?

22 A No.

23 Q Did you get a clear look at them?

24 A Yes.

25 Q After that 15 or 30 seconds or so, the men moved on as

1 you've already testified?

2 A Yes.

3 Q If you would, describe to the jury the direction they took  
4 and where they seemed to be going, from what you could observe?

5 A Okay. As you guys can see on the map, Carlson Lane, I was  
6 going towards Old Court. They were going down Carlson Lane  
7 towards Winfield Elementary School, as well as a day care center  
8 that would be on left-hand side of the street.

9 Just before you hit the day care center, it's a little  
10 cut pathway that they beared off into the woods.

11 Q And if it's all right with the Court, I'm going to ask you  
12 to take the microphone again and show us where the day care  
13 center and woods are.

14 A Okay. Okay. As you come down Carlson Lane, right here's  
15 the day care center. And it's little cut path just, just before  
16 you hit the day care center to go off into, further off into the  
17 woods. So this is the day care center.

18 Q Ms. David, did you, were you able to tell if the men -- did  
19 you actually see them walk into the wooded path or did you just  
20 see them heading in that direction?

21 A No, I saw them walk off into the wooded path.

22 Q Now, this would have been behind you at that point, is that  
23 correct?

24 A Yes.

25 Q Because you've moved up Carlson Lane?

1 A Yes.

2 Q Were still looking at them, trying to gauge where they were  
3 going?

4 A Yes, in my side view mirror and only because I was so  
5 concerned that I hit someone.

6 Q Were you a little nervous about this whole encounter?

7 A Yes.

8 Q After the men went in the woods, did you see them, where  
9 they went after they went into the woods? Did you follow them or  
10 anything like that?

11 A No.

12 Q Where did you go after that?

13 A Home.

14 Q And again, that's Bramble Lane?

15 A Yes.

16 Q When you got home, was there any police activity around your  
17 house?

18 A Not just as I pulled up.

19 Q Did you see anything when you got home to Bramble Lane?

20 A Yes.

21 Q What did you see on Bramble Lane when you got home?

22 A My neighbor.

23 Q And just to be clear, not what you were told by anyone else,  
24 just what you observed with your own eyes.

25 A Yes. My neighbor under the deck of my other neighbor's

1 apartment.

2 Q I'm going to show you a photograph which, if it's working,  
3 will come up on your screen. Do you see this photograph in front  
4 of you?

5 A Yes.

6 Q This has been marked as Government's Exhibit S-56. What is  
7 this that we see on the screen?

8 A This is the apartment building where I live.

9 Q And it's not quite super easy to see. But does that say  
10 8618 there?

11 A Yes.

12 Q Is your personal apartment shown in this photograph, the one  
13 that you lived in at that time?

14 A No.

15 Q Where was, approximately where was your apartment relative  
16 to this photo?

17 A My apartment is in the back.

18 Q Now, you mentioned that you saw a neighbor under another  
19 neighbor's balcony?

20 A Yes.

21 Q Let me direct your attention to this part that I'm circling  
22 with my hand there. What is that part of the photograph, S-56,  
23 that I've circled?

24 A That's where I saw my neighbor laying.

25 Q Was there anyone with her, anybody attending to her, giving

1 her any kind of help?

2 A Yes. The young lady that lives in the apartment right  
3 above, right where the deck is, she was trying to assist her,  
4 trying to help her.

5 Q What was her name?

6 A Serena -- I don't remember Serena's last name.

7 Q Now, could you tell whether or not your neighbor -- first of  
8 all, did you know this neighbor's name, the one who was under the  
9 balcony?

10 A No, I didn't know her name. She hadn't been living in the  
11 apartment long.

12 Q But you recognized her as a neighbor?

13 A Yes.

14 Q Did she appear to be injured?

15 A Yes.

16 Q And did you, what did you see in terms of injuries that you  
17 could see?

18 A A lot of blood.

19 Q At some point, Ms. David, did you, did the police or  
20 paramedics arrive?

21 A Yes. The police did.

22 Q And did they do their thing, provide assistance to the lady  
23 under the balcony?

24 A Yes.

25 Q And did the police officers arrive and look around? Did the

1 police officers arrive and look around the lawn and the  
2 apartment?

3 A Yes. Asked questions.

4 Q Did there come a time when you spoke with a member of the  
5 police department?

6 A Yes.

7 Q And this would have been a member of the Baltimore County  
8 Police Department?

9 A Yes.

10 Q And did you describe for him the encounter, that's the word  
11 I keep using, but did you describe with him the encounter you had  
12 on Carlson Lane with the two men?

13 A Yes, I did.

14 Q At some point did you go any place with any police officers?

15 A Yes.

16 Q Where did you go?

17 A The first officer, I went to Carlson Lane to show him  
18 exactly where I was and what happened. And the second officer,  
19 he took me to see if these were the two men that I saw on Carlson  
20 Lane.

21 Q So if I understand you correctly, Ms. David, were there two  
22 trips you took with the police?

23 A Yes.

24 Q And the first one was with an officer over to Carlson Lane  
25 and the woods and things like that?

1 A Yes.

2 Q And did you show him the wooded area and things?

3 A Yes, I did.

4 Q About how long after you got home to Bramble Lane did you  
5 take this first trip with the police officer? Just  
6 approximately.

7 A It couldn't have been five minutes. Five, ten minutes.

8 Q After going back to Carlson Lane with that officer, did that  
9 first officer take you back to Bramble?

10 A Yes.

11 Q And at some point there came a time with when you took  
12 another car ride with a second police officer?

13 A Yes.

14 Q Again, just approximately, how much time passed before you  
15 took that second car ride?

16 A Maybe another ten, about ten minutes, ten to fifteen  
17 minutes.

18 Q When you took that second car ride with the second officer,  
19 did he explain to you what the purpose of the trip was or what he  
20 would be asking you to do?

21 A Yes.

22 Q And what did he tell you? What information did the officer  
23 give you?

24 A All he said was, I just want you to see if these are the two  
25 guys that you saw on Carlson Lane.

1 Q And then he drove you from Bramble Lane some place?

2 A Yes.

3 Q Do you know where he took you?

4 A He took me on the other side of Carlson Lane, like further  
5 down Old Court Road, past a nursing home. And all the streets  
6 over there like end with the same name almost. It's not far from  
7 where I live at.

8 Q I'm going to approach this map again with the Court's  
9 permission. Ms. David, I'm just going to ask you if, to show me,  
10 there's a neighborhood right here. I'm sort of indicating  
11 broadly and circling with my hand on the left side, left lower  
12 side of Government's Exhibit S-1. Is this the neighborhood you  
13 were just mentioning on the reverse side of Carlson Lane woods?

14 A Yes, it is.

15 Q And you've indicated that all the streets had green  
16 something, Greens Lane, Green Mead, South Green, Green Knoll,  
17 Green Brush. Does that sound right?

18 A Yes. They all end or begin with the same name.

19 Q How long did it take to get from Bramble Lane down to that  
20 green neighborhood?

21 A Maybe about six minutes driving.

22 Q During the car trip, you've testified about what the officer  
23 asked you, told you about what you were going to do. Did he give  
24 you any information about the people you were going to look at or  
25 whether they'd been arrested or whether anything had been found



1 on them or what they were wearing or anything like that?

2 A No.

3 Q Did you know anything from the officer, from any police  
4 officers, other than that you were being driven out to this  
5 neighborhood to take a look at a couple guys?

6 A No.

7 Q At some point did you turn into this neighborhood and did  
8 the officer stop some place and allow you to look at something?

9 A He didn't quite stop. He more so slowed down. Because  
10 before he came to a stop, I said, Those are the two guys right  
11 there.

12 Q Let me ask you about that. You pulled into the neighborhood  
13 with the officer?

14 A Yes.

15 Q Was there anyone else in the car with you, by the way?  
16 Other than you and the officer?

17 A No. No.

18 Q You pull in and at some point you see two men, is that  
19 right?

20 A Yes.

21 Q Were there officers around these two individuals? Were  
22 there police cars or police officers in the area?

23 A Yes.

24 Q And the two guys or the two gentlemen that you looked at, I  
25 assume, were not in uniform, they were not police officer or

1 anything like that?

2 A Yes. The two that I identified. They just had on regular  
3 clothes. But it was one officer that I saw standing.

4 Q When you first saw these men, when you first glimpsed them,  
5 what kind of a look were you able to get at them at that point?

6 A They didn't see me. The two young men didn't see me.

7 Q What kind of look were you able to get at them?

8 A Oh, a good look. A nice clear look.

9 Q Do you remember if they were standing or sitting when you  
10 first saw them?

11 A One was sitting. The one that was sitting on the curb was  
12 the one with the fine braids. And that's the first one I  
13 noticed.

14 Q And when you saw these men and you had a chance to look at  
15 them, did you tell anything to the officer you were with?

16 A Yes. I said, Officer, those are the two young men that I  
17 saw on Carlson Lane.

18 Q And again, you've already anticipated this, but the two men  
19 that you saw on the street with the police officer, were these  
20 the two men you'd seen earlier on Carlson Lane?

21 A Yes.

22 Q Were you 100% certain about that at the time?

23 A Yes.

24 Q What was it about these two men that caused you to believe  
25 and caused you to conclude that they were the same ones you had

1 seen on Carlson Lane?

2 A The braids, of course. And the fact that I was afraid  
3 because I knew I had ran into the smaller one, or the shorter  
4 one, rather.

5 Q Being afraid, why did that cause you to have a stronger  
6 sense of what they looked like?

7 A Just, A, I know, I know this guy right here, I know I ran  
8 into this guy, the braids, the jeans, the butter Tims. This is  
9 the young man.

10 Q Did it cause you to look at him more closely?

11 A From the first time, yes.

12 Q Was one of the two men that you saw with the police, was one  
13 taller than the other one?

14 A The shorter one was sitting down. So yes.

15 Q And which of the ones had the braids that you noticed?

16 A The shorter young man.

17 Q When you told the police officer that these were the men  
18 you'd seen, what was his reaction?

19 A He said, Are you sure? And I said yes. He said, Are you  
20 certain? I said yes. He said, Okay, thank you, and then took me  
21 back to Bramble Lane.

22 Q And were you sure and were you certain?

23 A Yes.

24 Q Police officer took you back to Bramble Lane. Did he give  
25 you any other information about the two men or the case or

1 anything like that?

2 A No.

3 Q Ms. David, up to that time, had you had any contact or had  
4 you had any chance to talk to an neighbor of yours named Andrea  
5 Smith, by any chance?

6 A Yes.

7 Q And again, prior to going out with the police officers to  
8 the scene and things like that, did you know one way or the other  
9 whether Ms. Smith had, had a chance to look at these two men or  
10 to, to identify or not identify these men? Did you have any  
11 sense of whether or not she had done that or whether or not she  
12 had seen anything or what she'd seen?

13 A No.

14 Q Now, we've talked about the two men that you identified out  
15 in the green neighborhood at about, and that process. Let me ask  
16 you this. This is back in 2002, is that right?

17 A Yes.

18 Q If you saw these two men again, either the shorter one with  
19 the braids or the taller one, would you know if you saw them  
20 again, would you recognize them?

21 A No.

22 Q Because of the time that's passed?

23 A Right. No, I wouldn't.

24 Q Looking around the courtroom today, do you know one way or  
25 the other whether either of those two men are in court today?

1 A No, sir.

2 Q They could be, they might not be? You're not sure?

3 A Right. I'm not sure.

4 Q You mentioned the fact that one of the men during the  
5 Carlson Lane encounter actually touched his hands to your bumper,  
6 is that right?

7 A Yes.

8 Q At any point, is that something that you told the police  
9 about or informed the police, by the way, one of them touched my  
10 car?

11 A No, I didn't.

12 Q Did not occur to you?

13 A No.

14 Q Thank you, Ms. David. Nothing further, Your Honor.

15 THE COURT: Would you like some water, Ms. David?

16 THE WITNESS: No. It's cold in here.

17 THE COURT: Feels great to me. Sorry.

18 CROSS EXAMINATION

19 BY MR. KURLAND:

20 Q Judge, just give me a moment. I just need to look at one  
21 thing.

22 THE COURT: Certainly. I can't offer you hot tea, Ms.  
23 David.

24 THE WITNESS: How are you doing today?

25 THE COURT: I'm fine, thank you.

1 THE WITNESS: Good.

2 BY MR. KURLAND:

3 Q Good morning, Ms. David.

4 A Good morning. How are you?

5 Q I'm pretty good. I just have a couple of questions, just to  
6 clarify a few things that you said a few moments ago with Mr.  
7 Hanlon. I take it that at the time that you were driving up  
8 Carlson Lane and first saw the two, the two men, when you  
9 thought, when you hit one, you obviously were nervous and scared?

10 A Yes.

11 Q Okay. And I think you actually testified that you thought,  
12 Oh, my God, I was going to jail?

13 A Yes.

14 Q So your heart must have been pounding very quickly?

15 A Yes.

16 Q I take it that's obviously not the most ideal time to, you  
17 know, clear headed make decisions and stuff? Would you agree  
18 with that?

19 A No, I wouldn't.

20 Q Okay. So you're saying that you're pretty clear headed when  
21 you hit somebody and you think you're going to go to jail?

22 A Yes.

23 Q Okay. All right. Was your heart bracing?

24 A Yes.

25 Q And you've decided to speed up a little bit and kind of

1 speed home?

2 A Yes, after the phone call.

3 Q Sure.

4 A Right.

5 Q Just wanted to get that clear. Okay. Just a couple other  
6 things. We're now after Mr. Hanlon showed you your earlier  
7 statement. You're now, you're pretty clear, you are certain that  
8 the taller one was wearing a red hat, is that correct?

9 A Yes.

10 Q So you said a few minutes ago, with respect to Mr. Hanlon,  
11 that you didn't tell the police at the time that one of the  
12 suspects actually touched your car?

13 A Yes.

14 Q And so I take it, then, that your car was never, the police  
15 officers or nobody took your car to get dusted for prints or  
16 anything?

17 A No.

18 Q All right. If I may, Your Honor, I would like to approach  
19 the witness and have her look at the same earlier statement that  
20 I believe Mr. Hanlon showed her.

21 THE COURT: Certainly. She may have a copy of it.

22 Q Is that up there?

23 A Yes.

24 Q Anyway, without actually reading it aloud, if you could take  
25 a look at the second page of the document, which is denominated

1 Page Two. And if you look up at the last four lines that are  
2 written. Just for clarification. Without saying what's on the  
3 document, this is the police statement that was given on June  
4 7th, 2002, that you wrote down, with police officers?

5 A Yes.

6 Q Okay. That was obviously much closer in time then than we  
7 are today with respect to the event?

8 A Yes.

9 Q Now, is there anything on that document that refreshes your  
10 memory as to whether or not you told the police officers about  
11 whether or not any of the suspects had any type of contact with  
12 your car?

13 A Yes, I did.

14 Q Okay. Just for clarification. You say, Yes, you did. So  
15 now is it your recollection that you did, in fact, tell the  
16 police officers that one of the, one of the men you saw actually  
17 did touch your car?

18 A Hit the bumper but not with his hands.

19 Q I understand that. But, so you did tell them that you had,  
20 one of the guys you saw actually did come into physical contact  
21 with your car?

22 A Yes.

23 Q And that information was given to the police officers that  
24 day?

25 A Yes.



1 Q And, but, as you said before, the police never took your car  
2 away and had it dusted for fingerprints or palm prints or  
3 anything?

4 A No.

5 Q That's all with respect that. I just have a couple more  
6 questions. Okay. I know that, you know, your heart was racing a  
7 little bit but you were pretty clear-eyed, as you testified to,  
8 you know, that you pushed open, in pretty good shape as to be  
9 clear-headed.

10 When you saw the two men run out, did you have any  
11 chance to see whether or not there was any writing on their  
12 shirts?

13 A I don't remember.

14 Q You don't remember?

15 A I mean, I can look at my statement.

16 Q Okay. Please look at your statement, see if your statement  
17 refreshes your memory as to whether or not you saw any words or  
18 writings on the shirts.

19 A No.

20 Q Okay. When you say no, meaning what?

21 A No, I didn't see any writings or statements, logos on the  
22 shirts.

23 Q Okay. And at the time you saw the two men, you were able to  
24 observe, I would assume, both the men's hands, correct?

25 A Yes.

1 Q And there was nothing in their hands?

2 A No. I didn't see anything in their hands.

3 Q Okay. And when they were, you said they walked fast,  
4 correct?

5 A Once away from my car, yes.

6 Q They walked fast. And that was even after you hit one?

7 A Yes.

8 Q So as they walked away and walked fast, they didn't appear  
9 to be impeded or hurt in any way?

10 A Right.

11 Q Didn't appear to have anything, you know, you know, stuck  
12 down their shorts in such a way that would make them walk with a  
13 limp or anything?

14 A No.

15 Q Okay. And I just have a few more questions. Let me just  
16 kind of doublecheck my notes on a few things.

17 Oh, at the time that -- Mr. Hanlon asked you a series  
18 of questions concerning what you observed when the police brought  
19 you back that second time. The first time you went out to look,  
20 to show the police officers where on Carlson Lane you had the  
21 contact?

22 A Yes.

23 Q The first time. And then you went to that area in that  
24 other neighborhood where, where you observed the two men that you  
25 said were the two you saw on the street?

1 A Yes.

2 Q I want to just ask you a couple of questions about what they  
3 were wearing at the time.

4 Is it your testimony that they were wearing the same  
5 type of clothes at the time you saw them with, when the police  
6 officers were standing around them than when they were in the,  
7 than when you hit, when you saw them on Carlson Lane?

8 A When I saw them on Carlson Lane, I noticed the shorter,  
9 young man with the fine braids. That goes without saying.

10 Q Sure.

11 A The butter Tims, which are Timberland boots, and the jeans,  
12 right off the bat. I was like, oh, those are the two guys right  
13 there.

14 Q Okay. So based on the fact that one had that, the braids  
15 you liked and the Timberland jeans. That wasn't my question. My  
16 question was, were the two men wearing the same articles of  
17 clothing at the time you saw them when the police took you out to  
18 that other neighborhood as compared to when you saw them just a  
19 couple of minutes before on Carlson Lane?

20 A I can't remember.

21 Q You can't remember. Okay. Let me just ask you one other  
22 thing, and I don't mean to be, you know, nitpicking or anything.  
23 But I take it my eyes are bad. What's the color of your, of the  
24 outfit you're wearing? Is that blue or --

25 A Yes. It's blue jean.

1 Q Okay. Isn't it correct to say that the first time that you  
2 described the taller man you saw who was wearing the red hat,  
3 that he was wearing black jeans?

4 A Yes, if it's in my statement, yes.

5 Q Why don't you just doublecheck and just have that refresh  
6 your memory. Then the question is, the first time, your first  
7 description of the taller man with the red hat, that you say he  
8 was wearing black jeans?

9 A Yes.

10 Q Can I just have a moment with co-counsel?

11 THE COURT: Certainly.

12 (Pause in proceedings.)

13 MR. KURLAND: I have no further questions, Your Honor.  
14 Thank you, Ms. David.

15 THE WITNESS: Okay.

16 THE COURT: Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. HANLON:

19 Q Just briefly, Your Honor, I think. Ms. David, you still  
20 have that statement in front of you?

21 A Yes.

22 Q If you would, Mr. Kurland asked you a couple of questions  
23 about whether or not you told the police about any contact either  
24 of these men had had with the car. I believe during direct I  
25 asked you a similar question in relation to whether or not you

1 talked to the police about whether the men touched their hands to  
2 the car. Did you tell any of the police officers whether the  
3 men, either of them, had touched their hands to any part of your  
4 car?

5 A No.

6 Q And if you would, if you wouldn't mind, can you read that  
7 last part of your statement, the question and answer, the very  
8 end of your statement, that Mr. Kurland ask you about, about what  
9 it is you articulated for the police that day in your statement?

10 A Yes. The one in the gray shirt hit the bumper and gave  
11 eye-to-eye contact.

12 Q So you told the police about a hit on the bumper?

13 A Yes.

14 Q But there was no discussion about touching his hands to the  
15 car?

16 A No.

17 Q You were asked some questions about whether or not there was  
18 any writing on any of the men's shirts when you saw them on  
19 Carlson Lane. If I understood you correctly, you don't remember  
20 seeing any writing, is that correct?

21 A Right.

22 Q Do you remember anything about the type of shirts the men  
23 were wearing? The color or anything like that?

24 A Both, both young men had on shirts in light color.

25 Q Whether they were gray or white?

1 A Right. Gray, light gray, white. They were both light in  
2 color.

3 Q And you talked about Tims during direct. And I apologize if  
4 I didn't ask you this. Was it just one of the men wearing Tims,  
5 Timberland boots, or were both of the men wearing Timberland  
6 boots?

7 A Both of the men were wearing Timberland boots.

8 Q And you do not remember one way or the other whether the men  
9 were clothed exactly the same way when you saw them on Carlson  
10 Lane versus when you made the identification in the green  
11 neighborhood, is that right?

12 A That's right.

13 Q Your Honor, I believe that is all I have.

14 MR. KURLAND: Court's indulgence for just one quick  
15 moment, Your Honor.

16 THE COURT: Yes, Mr. Kurland.

17 MR. KURLAND: I just might have one question. Nothing,  
18 Your Honor.

19 THE COURT: Thank you. Thank you very much, Ms. David.  
20 You are excused.

21 THE WITNESS: Thank you.

22 THE COURT: Next witness.

23 MR. HANLON: Your Honor, the United States calls Andrea  
24 Smith.

25 ANDREA SMITH, GOVERNMENT'S WITNESS, SWORN

1 THE WITNESS: I do.

2 THE CLERK: Be seated. Scoot up and speak directly  
3 toward the mike. State your name and spell it for the record.

4 THE WITNESS: Andrea Smith.

5 THE COURT: Spell your first and last name, please, Ms.  
6 Smith.

7 THE WITNESS: A-N --

8 THE COURT: Get close, get closer to the microphone,  
9 please.

10 THE WITNESS: A-N-D-R-E-A. S-M-I-T-H.

11 DIRECT EXAMINATION

12 BY MR. HANLON:

13 Q Thank you, Your Honor. Ms. Smith, good morning to you. How  
14 are you today?

15 A Fine.

16 Q Do you need any water or anything like that before I begin?

17 A No.

18 Q How old are you, Ms. Smith?

19 A 19.

20 Q And you currently live in Baltimore City or Baltimore  
21 County, this area, is that correct?

22 A My family lives in Baltimore County.

23 Q Do you live, your family lives in Baltimore County but I  
24 think you're in school, is that correct?

25 A Um-hum.

1 Q That's a yes?

2 A Yes.

3 Q And --

4 THE COURT: I'm sorry. Ms. Smith, get a little closer  
5 to the microphone, please. Thank you.

6 Q And Ms. Smith, if you could maybe raise your voice a little  
7 bit for me, I'd appreciate it. Did you grow up in the Baltimore  
8 area?

9 A Yes.

10 Q You grew up with your family in Baltimore County?

11 A Yes.

12 Q Back in June of 2002, were you living with your mom in  
13 Baltimore County at that time?

14 A Yes.

15 Q And your address at that time, was it 8618 Bramble Lane?

16 A Yes.

17 Q And that's in Baltimore County, is that right?

18 A Yes.

19 Q And back in 2002, I don't want to do the math and get it  
20 wrong, but were you 12 or 13 at that time?

21 A I think 13 or 12. One of them.

22 Q And you were obviously living with your mom and going to  
23 school and things like that at the time, is that right?

24 A Yes.

25 Q I guess it's possible June might have been during the summer



1 break. But you were in school, is that correct?

2 A Yes.

3 Q Now, on June 7th of 2002, during the afternoon, did  
4 something happen that day that you've had to testify about and  
5 that you've talked to the police about a few times? You've  
6 talked to me about as well?

7 A Yes.

8 Q And on that particular afternoon, around about 4:30, 5:00 or  
9 so, were you outside near your house?

10 A Yes.

11 Q What were you doing outside your house?

12 A Talking.

13 Q Who were you talking to?

14 A The people that live in my building.

15 Q Neighbors and things like that?

16 A Yes.

17 Q Was your mom home at that time, do you remember?

18 A No.

19 Q Was she working or maybe coming home from work pretty soon?  
20 Or was she out running an errand?

21 A She was at the store.

22 Q She was at the store? That's a yes?

23 A Yes.

24 Q And what was she doing at the store?

25 A Shopping.

1 Q Shopping. Were you planning on having a cookout or anything  
2 like that that day, if you remember?

3 A As far as I can remember.

4 Q I know it's a while back. Now, while you were outside, Ms.  
5 Smith, I'm going to show you a picture. It's going to come up on  
6 your screen in front of you. This is called Government's Exhibit  
7 S-56. And I'm going to zoom in on part of it, if that's okay.  
8 Do you see the number right there next to the door?

9 A Yes.

10 Q Is this, is that 8618 Bramble Lane?

11 A Yes.

12 Q Is this the front entrance to your apartment building that  
13 you were living at back in June of 2002?

14 A Yes.

15 Q Yes?

16 A Yes.

17 Q While you were outside that day, were you near or close to  
18 this front entrance?

19 A Yes.

20 Q Were you in this area?

21 A Yes.

22 Q While you were outside that afternoon, again, 4:30 or 5:00  
23 or so, did something happen to one of your neighbors, Ms. Smith?

24 A Yes.

25 Q What did you see happen?

1 A She fell.

2 Q All right. Your neighbor fell. She fell from one place to  
3 the other?

4 A Yes.

5 Q If you can, describe it on the screen and then I'll circle  
6 it. From where did your neighbor fall?

7 A From the top porch.

8 Q Top porch on the left or on the right?

9 A On the left, my left.

10 Q So she fell from this porch here?

11 A Yes.

12 Q And is this a neighbor that you have recognized as a  
13 neighbor? Did you know her?

14 A I seen her.

15 Q Did you know her name at that time?

16 A No.

17 Q But you knew she was a neighbor?

18 A Yes.

19 Q Do you know if she lived in that apartment?

20 A Yes.

21 Q And your neighbor fell. And did she fall down to the  
22 ground?

23 A Yes.

24 Q What happened to your neighbor after she fell from that  
25 third floor porch down to the ground below?

1 A She was hurt.

2 Q And when you say she was hurt, how was she hurt?

3 A She hurt herself from falling.

4 Q Where did your neighbor go after she fell from the third  
5 floor porch?

6 A She crawled under the porch.

7 Q When you say she crawled under the porch, did she crawl  
8 under this space here?

9 A Yes.

10 Q And she seemed to be hurt, you testified?

11 A Yes.

12 Q Did she ask anybody for help or anything like that?

13 A She told me to call the police.

14 Q Now, as your neighbor was under the porch, did she, did  
15 anyone else come outside? Did you see anyone else?

16 A The lady that was on the porch, right there.

17 Q Um-hum.

18 A The porch she crawled under, came outside.

19 Q So there was another lady that came out to check?

20 A Yeah.

21 Q And did you see anyone else approach your neighbor who had  
22 fallen from the porch and hurt herself?

23 A After she fell?

24 Q Yes.

25 A When? When the lady came out on her porch?

1 Q After the lady.

2 A Yes.

3 Q All right. At some point, who else did you see walk up  
4 towards your neighbor who was hurt under the porch?

5 A Two men.

6 Q Where did these two men come from, Ms. Smith? Did you see  
7 where they came from?

8 A Upstairs.

9 Q Upstairs inside the apartment building?

10 A Yes.

11 Q And you're still sort of nearby while this is happening, is  
12 that right?

13 A Yes.

14 Q The two men walked out, and where did the two men go?

15 A Towards her.

16 Q Towards your neighbor who was under the porch who was hurt?

17 A Hmm?

18 Q They went towards your neighbor who was under the porch  
19 hurt?

20 A Yeah.

21 Q And when these two men walked up, what did they do?

22 A They were standing in front of her.

23 Q The two men?

24 A Yeah.

25 Q Were standing in front of your neighbor. And did they do

1 anything?

2 A They shoot at her.

3 Q They shot at her?

4 A Um-hum.

5 Q That's a yes?

6 A Yes.

7 Q Could you tell if it was both of the men that shot at your  
8 neighbor or one of the men that shot at your neighbor?

9 A One of them.

10 Q Now, Ms. Smith, do you remember anything, sitting here  
11 today, about what these two men were wearing or what they looked  
12 like?

13 A I don't know.

14 Q They were both men, is that correct?

15 A Yes.

16 Q Do you remember what their, what their race or their  
17 ethnicity were?

18 A Yes.

19 Q And what was their, what was their racial or ethnic  
20 background?

21 A They were colored.

22 Q African-American?

23 A Yes.

24 Q Now, do you remember if one or the other was taller or  
25 shorter than the other?

1 A I don't remember.

2 Q And you don't remember which one of them shot the lady, is  
3 that correct?

4 A Don't remember.

5 Q Do you remember seeing a gun?

6 A Yes.

7 Q And was the gun in one of the two men's hands?

8 A I don't remember.

9 Q You remember hearing a bang?

10 A A bang?

11 Q Yeah, like a gunshot.

12 A Yeah.

13 Q And they shot your neighbor, is that correct?

14 A Yes.

15 Q Do you remember if it was more than one shot or just one  
16 shot that you heard, or do you remember?

17 A I don't remember.

18 Q Now, after one of these two men shot your neighbor, did they  
19 do anything else to her? Did they take anything from her or did  
20 they go any place?

21 A They didn't touch her.

22 Q Did the two men go any place?

23 A They ran.

24 Q And did you see them run?

25 A Yeah.

1 Q And in what direction did you see the men run?

2 A Towards the circle.

3 Q And when you say "towards the circle", what do you mean by  
4 the circle? Is the circle something near your house?

5 A Yeah.

6 Q Is it like a little circle where people can go?

7 A Um-hum.

8 Q Your Honor, may I approach the easel?

9 THE COURT: Yes.

10 Q Ms. Smith, this big blow-up poster I have is called  
11 Government's Exhibit S-1. And it's sort of like an aerial  
12 photographic map. Does this show some of the area around your  
13 neighborhood, including Bramble Lane up around here, where you  
14 were living in 2002?

15 A Yeah.

16 Q And there's a little red star here. And is this  
17 approximately close to one of the apartment buildings, 8618,  
18 where you and your mom were living that we were talking about  
19 today?

20 A What's the question?

21 Q The red star, is that sort of close, more or less close to  
22 8618, to the building that you and your mom were living in in  
23 June of 2002?

24 A Yes.

25 Q Now, you mentioned that there was a circle and that the men



1 ran in the direction of the circle, is that right?

2 A Yes.

3 Q Is this the circle here?

4 A Yes.

5 Q Now, past on down the circle from the direction the men were  
6 running towards the circle, is the next road down south Old Court  
7 Road?

8 A Yes.

9 Q And is that the direction that the men were running in?

10 A Yes.

11 Q Your Honor, if I may approach one more time. Ms. Smith,  
12 there came a time after you saw what you saw that you actually  
13 talked to the police and gave the police a statement about what  
14 you had seen that day, is that right?

15 A Yes.

16 Q And you actually wrote or something, you actually wrote it  
17 yourself or something may have been written for you, that you had  
18 a chance to read and sign if it was correct, is that right? Is  
19 that correct?

20 A Yes.

21 Q The piece of paper I've just put in front of you, is that  
22 the statement that you looked over and signed the day that you  
23 saw everything you just described?

24 A Yes.

25 Q I'm going to ask you if you can, Ms. Smith, just to read it

1 over to yourself. Take all the time you need. And I want, I  
2 want you to take a look at it and tell me if it refreshes your  
3 recollection about what the men were wearing that day. And let  
4 me know when you're through.

5 (Pause in Proceedings.)

6 A I read it.

7 Q Having read your statement, Ms. Smith, does that refresh  
8 your recollection, does it help you remember what it was that the  
9 men were wearing that day?

10 A What's the question?

11 Q Sure. I'll try to give it to you simpler. Does reading  
12 your statement help you to remember what the men were wearing  
13 that day, the ones that you saw shoot your neighbor? Does it put  
14 a picture in your head of what they were wearing?

15 A Yeah.

16 Q It does help you remember?

17 A A little. Not really.

18 Q Doesn't really help you remember?

19 A No, not really.

20 Q Now, this statement that you read, let me just ask you a  
21 couple of questions about the statement itself, Ms. Smith. This  
22 is a statement that you filled out, or not that you filled out,  
23 but it was written out and you signed it on June 7th of 2002, is  
24 that right?

25 A Yes.

1 Q And that was the same day that you witnessed everything that  
2 you saw that you just described, is that right?

3 A Yes.

4 Q And I think the time on the statement, it's in police  
5 military time. It says 1830. If my math is right, I think that  
6 would have been 6:30 p.m. that you had an opportunity to have the  
7 statement written and then you read it and signed it. Does that  
8 sound about right? About 6:30 p.m.?

9 A I don't remember what time it was.

10 Q But it was, does the same day sound right?

11 A Yeah.

12 Q When this statement was written out, if I'm looking at it,  
13 it looks like part of it was written in one type of handwriting  
14 and then there's one line at the end of the second page that's  
15 got a different handwriting. That different handwriting on the  
16 second page, is that something that you added in your own hand?

17 A Yes.

18 Q The rest of it, was it written down by your mom or by a  
19 police officer, somebody for you, to take a look at it and read?

20 A Yeah.

21 Q And did you have a chance to read it and did you sign it?

22 A I signed it.

23 Q And did, at the time that you filled out the statement or  
24 that you signed it, you had a chance to think about everything  
25 that had happened and you signed basically what you remembered

1       seeing that day, is that fair?

2       A       Yes.

3       Q       Your Honor, the government would propose to read a segment  
4       of this written statement at this time.

5               THE COURT:   You may proceed.

6               MR. KURLAND:   Your Honor, we might need a sidebar on  
7       this.

8               THE COURT:   Well, you're only going to read a portion  
9       of it, correct?

10              MR. HANLON:   Going to read a portion relating to --  
11       well, yes, only a portion under Rule 802(5).

12              MR. KURLAND:   Your Honor, I would like to at least be  
13       able to speak with Mr. Hanlon to see what portion.

14              THE COURT:   All right.   You can confer.

15              MR. HANLON:   Certainly, Your Honor.

16              (Pause in Proceedings.)

17       BY MR. HANLON:

18       Q       Thank you, your Honor.   Sorry about that, Ms. Smith.   You  
19       still have your written statement in front of you, is that right?

20       A       Yes.

21       Q       Okay.   I'm going to read part of it.   And in fact, from  
22       right there.   From where I indicated, I'm going to read this and  
23       you tell me if I get any part of it wrong.   Okay?

24              The statement reads:   One man had on a white top and  
25       blue pants.   The other one had on a gray top and blue pants.   The

1 one with the gray top had corn rows in his hair. The other one  
2 had a red scarf in his front pocket right. The one that shot the  
3 girl had on a red hat.

4 Did I read that correctly?

5 A No. Yes.

6 Q I did read it correctly?

7 A Um-hum.

8 Q Okay. That's a yes?

9 A Yes.

10 Q Now, after the men ran off towards the circle, Ms. Smith,  
11 your neighbor was hurt and she'd been shot. At some point did  
12 police and paramedics show up to try to help her?

13 A Yeah.

14 Q And did there come a time when you actually talked to a  
15 police officer about what you'd seen and gave them the  
16 information that you've given today?

17 A Yes.

18 Q Did a police officer at some point take you some place to  
19 look at someone?

20 A Yes.

21 Q And did your mom go with you in the car?

22 A Yes.

23 Q The police officer, was he wearing a police uniform?

24 A I don't remember what he was wearing.

25 Q And you drove some place with him, is that right?

1 A Yes.

2 Q Was it far from your house? Did it take a long time to get  
3 there or did it take a few minutes?

4 A A few minutes.

5 Q And was it still light out when you went out with the  
6 officer?

7 A I don't remember.

8 Q At some point, the officer pulled into a neighborhood with  
9 you. And you drove up and there were some, there were some,  
10 well, there were two gentlemen, two guys that you looked at, is  
11 that correct?

12 A Yes.

13 Q And did the officer, as he was taking you from Bramble Lane  
14 to this other neighborhood where you were going to look at these  
15 two men, did he tell you that he was taking you out to see if  
16 these were the guys you'd seen?

17 A He didn't say nothing.

18 Q He didn't say anything? Did he give you any information or  
19 tell you anything about the guys you were coming to look at?

20 A No.

21 Q Did you understand that you were going to look at some guys  
22 to see if they were the ones you'd seen shoot your neighbor?

23 A Yes.

24 Q And when you got out to this other neighborhood and you saw  
25 two men, did you tell the police officer anything?

1 A Yes.

2 Q And what did you tell the officer? Did you tell him if the  
3 men you saw on the street, that the officer showed you, were the  
4 men that you'd seen shoot your neighbor?

5 A Yes.

6 Q And were you sure about that at the time?

7 A I think so.

8 Q This was several years ago, is that right, Ms. Smith?

9 A Yes.

10 Q If you saw these men again, would you have any idea if you  
11 recognized them, would you know one way or the other if you saw  
12 them again?

13 A No.

14 Q Looking around the courtroom today, do you know one way or  
15 the other whether or not any of the people in this courtroom are  
16 the men that you saw do the shooting or that you saw with the  
17 police officer?

18 A I don't know.

19 Q Thank you, Ms. Smith. Nothing further, Your Honor.

20 MR. KURLAND: I just need a moment, Your Honor.

21 THE COURT: Ms. Rhodes has taken a little ill, ladies  
22 and gentlemen. I've excused her from remaining in the courtroom.  
23 Hopefully, she'll be able to rejoin us today.

24 CROSS EXAMINATION

25 BY MR. KURLAND:

1 Q Good morning, Ms. Smith.

2 A Hello.

3 Q Would you like me to call you Andrea or Ms. Smith or do you  
4 care?

5 A I don't care.

6 Q Okay. I'll call you Ms. Smith, then. I'm going to place up  
7 on the machine Government's S-56. Is that in the right direction  
8 on your screen?

9 A Yes.

10 Q Ms. Smith, I'm just going to ask you a couple of questions.  
11 When Mr. Hanlon showed you your statement, just so it's clear,  
12 it's your testimony now that it was the, that the man in the red  
13 hat was the one that shot?

14 A Hmm?

15 Q It was the man in the red hat that, that shot?

16 A Yeah. That's what's on the paper.

17 Q Well, I know it's on the paper, but, I mean, is that your  
18 testimony today?

19 A Yes.

20 Q All right. I want you to just take a look at, at S-56, the  
21 picture of your, of the apartment building.

22 A Um-hum.

23 Q Could you just kind of indicate, and I think if you touch  
24 the screen it will make a mark.

25 THE COURT: I think, Mr. Kurland, it might be more --



1 Q Should I do it?

2 THE COURT: Yeah. If you would do it.

3 Q Ms. Smith, I want to place a mark on the picture that will  
4 show roughly where you were when your neighbor fell off the  
5 balcony.

6 THE COURT: You can approach the witness and have her  
7 actually point it out to you.

8 Q Okay. And then I'll come back and --

9 THE COURT: Yes.

10 Q Ms. Smith, can you kind of, just kind of touch the screen to  
11 show where you were when your neighbor fell off the balcony?

12 A Right here (indicating).

13 Q You were underneath the balcony?

14 A I was standing right there. Right there, right there.

15 Q Okay. All right. I will -- okay. Let me go back there and  
16 I'll try to -- I know it's hard to sometimes put marks on these  
17 things. And I'm not sure I can erase this. I might need the  
18 government's assistance there for the delete button. All right.

19 Ms. Smith, there's a red marker of some sort on the  
20 grass. Do you see that in the picture?

21 A Yes.

22 Q All right. I'm trying to just get a gauge as to where you  
23 were standing in the grass area. Were you in the grass area or  
24 were you up on that first balcony?

25 A I was in the grass.

1 Q Okay. So sort of -- proud of myself -- sort of where I've  
2 placed that, the pink mark? Is that in the same general area  
3 where you were?

4 A I was on that part of the grass.

5 Q All right. So I just want to make it clear that that's,  
6 that the mark that I placed is roughly in the same general area  
7 where you were when you saw what you testified about?

8 A Yeah. That's where, where exactly where was, yeah.

9 Q Okay. That's what I wanted from that. I know it's  
10 difficult to think back several years and I know it's  
11 particularly difficult to think back about this event. So I'm  
12 just going to ask you a couple more questions. I would like to,  
13 I'm going to put up here what's already been admitted into  
14 evidence as Government's PH-58. Okay.

15 Ms. Smith, does the picture of the man that I just put  
16 up there, can you see that on your screen?

17 A A little.

18 Q A little? Is it clear on everybody's screen?

19 THE COURT: Perhaps if you zoom back just a bit, Mr.  
20 Kurland, the witness may be able to see it a little.

21 Q I'm learning.

22 THE COURT: Good. Can you see it now, Ms. Smith?

23 THE WITNESS: Yes.

24 THE COURT: All right.

25 BY MR. KURLAND:

1 Q Ms. Smith, do you have any recollection of seeing that man  
2 out there on or near the grass on June 7th, 2002?

3 A I don't know.

4 Q You don't know?

5 A I don't know.

6 Q So it could have been, you just don't know?

7 A I don't know if that's him.

8 Q All right. You don't know if that's him. So you don't  
9 know, you're saying you don't know if it's one of the two men  
10 that came down?

11 A I don't remember what they looked like.

12 Q Okay. All right. It was your testimony that two men came  
13 down the stairs, correct?

14 A Yes.

15 Q Was there any, did you see any other adult African-American  
16 man in that area when you were outside playing with your other  
17 friends?

18 A No.

19 Q Ms. Smith, again, you indicated a moment ago when Mr. Hanlon  
20 was asking you questions, when the police took you out there and  
21 asked you to look at the two men, I believe it was your testimony  
22 just a few minutes ago that you, you weren't sure if those were  
23 the men that you saw at the apartment?

24 MR. HANLON: Objection, Your Honor.

25 THE WITNESS: What's the question?

1 THE COURT: What's the question?

2 BY MR. KURLAND:

3 Q I guess, was it your testimony that when the police officers  
4 took you out to look at the two men, that you weren't 100% sure  
5 they were the same guys you saw in front of your apartment?

6 A I don't remember what they looked like.

7 Q You don't remember? Okay. Just one moment, Your Honor.

8 (Pause in Proceedings.)

9 MR. KURLAND: I have no further questions, Your Honor.  
10 Ms. Smith, I'm finished.

11 THE COURT: Thank you, Mr. Kurland.

12 MR. HANLON: Unless there's other cross examination,  
13 Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. HANLON:

16 Q Ms. Smith, just a couple of questions. When the officer  
17 took you out there that day to look at the two men, and you did  
18 have a chance to look at them that day, is that right?

19 A Yes.

20 Q And when you looked at them, did you tell the police officer  
21 that day whether those were the men that you'd seen do the  
22 shooting?

23 A Yes.

24 Q And did you tell the police officer that they were the men  
25 who had done the shooting? Let me rephrase.

1 A What are you asking?

2 Q Is it correct that you told the officer the day that he took  
3 you out, when you saw those two men, that those were the men that  
4 had done the shooting, is that correct?

5 A It's possible.

6 Q When I asked you a few minutes ago during direct examination  
7 if the men that you saw out on the street were the men that you'd  
8 seen do the shooting, if I recollect your testimony correctly I  
9 believe you testified that you thought so. Am I remembering your  
10 testimony right?

11 A Yes.

12 Q Thank you, Your Honor.

13 THE COURT: Ms. Smith, thank you very much. You're  
14 excused. You can leave that paper there.

15 THE WITNESS: This here?

16 THE COURT: Yes. Thank you.

17 Ladies and gentlemen, we'll take a morning recess at  
18 this time. I'm advised that your snacks have been replenished  
19 and I'm glad to hear that.

20 I do expect we're going to have a more abbreviated  
21 luncheon recess today and we will be breaking earlier in the  
22 afternoon. So enjoy your snacks.

23 Please leave your note pads on your chairs. Have no  
24 discussion about any of the evidence. Keep an open mind about  
25 all issues. Jury's excused for a 15 minute recess. We're in

1 recess for 15 minutes.

2 (Recess at 10:54 p.m.)

3 THE COURT: Ready for Mr. Montgomery?

4 MR. HARDING: Yes.

5 THE COURT: Bring him out, please. Please be seated.

6 MR. COBURN: Your Honor, I do need the Court's  
7 permission to bring my laptop up to the podium when I cross  
8 examine. It's just for one particular purpose in terms --

9 THE COURT: I mean, I mean, if those are your notes, I  
10 don't have any problem with it. Is that what you mean?

11 MR. COBURN: No, Your Honor. There's actually a  
12 demonstrative on it which I wouldn't show the jury until after  
13 the witness recites the, what's already on there.

14 THE COURT: Okay. Can you tell us?

15 MR. COBURN: It's --

16 THE COURT: In other words, is it going to need to be  
17 hooked up to the system?

18 MR. COBURN: It will take two seconds, Your Honor. I  
19 already know how to do it.

20 THE COURT: All right. Okay.

21 MR. COBURN: Just like Mr. Harding's is hooked up right  
22 now.

23 THE COURT: All right. And what is the demonstrative?

24 MR. COBURN: Just a list of his prior statement.

25 THE COURT: A list of his prior statements. That

1       you're going to show him?

2               MR. COBURN: One at a time, with the Court's  
3 permission.

4               THE COURT: Well, is there an objection?

5               MR. HARDING: Yes.

6               MR. COBURN: I'm not going to show the statements.  
7 It's just a list of what they are.

8               MR. HARDING: I object to that, Your Honor.

9               MR. COBURN: I mean, without even knowing, you know,  
10 what the purpose of it is in the context of my cross, I'm not  
11 sure why he's objecting.

12              THE COURT: I'm not sure why you get to show -- if it's  
13 not in evidence, why would the jury get to see it?

14              MR. COBURN: I would just propose to use this little  
15 list of each statement that he gave just with place, date and  
16 time, as a demonstrative.

17              THE COURT: But if it's a prior inconsistent statement,  
18 if that's what you mean, then you can confront him with the  
19 statement, not a list of the statement.

20              MR. COBURN: Okay. It's probably a little hard for me  
21 to address it right now, without Your Honor seeing how it would  
22 work in. So I won't bring it up at this point. Just if Your  
23 Honor would allow me to address it again later, I'm sure there  
24 will be a lunch break in the interim. That would be much  
25 appreciated.

1           THE COURT: All right. I'll try to find some time to  
2 hear you on it. But if it's not evidence, it's not evidence.  
3 And if it's a prior inconsistent statement, it's not evidence.

4           MR. COBURN: I understand.

5           THE COURT: All right.

6           MR. MARTIN: Your Honor, as you may have noticed, I  
7 really don't have a dog in this fight with this witness. There  
8 are some things I may want to ask him. I would like to do it  
9 last after all the other defense lawyers are done. Would that be  
10 okay? I may decide when they're done that I don't have to do it.  
11 That's why I'd like to wait.

12          THE COURT: What is the order that you all have agreed  
13 to with this witness? I know that Mr. Coburn goes first.

14          MR. LAWLOR: Yeah. Other than that, it was going to go  
15 normal order. So I guess if this witness, if the Court will  
16 permit it, would be Mr. Coburn, myself, Mr. Crowe.

17          THE COURT: Okay. I don't have any problem with that.

18          MR. MARTIN: Thank you, Your Honor.

19          THE COURT: We'll have the jury, please.

20          Now, Mr. Harding, is there any issue about the Stop  
21 Snitching? Is there no objection?

22          MR. HARDING: I haven't heard one.

23          THE COURT: Okay. I haven't, either. All right.

24          MR. COBURN: Well -- okay.

25          THE COURT: I wasn't inviting one, Mr. Coburn. Well,



1 the jury's coming out now.

2 MR. COBURN: I'll say it in three seconds. We do  
3 object to it, Your Honor, on the ground that it's just  
4 inflammatory and doesn't relate to Mr. Gardner.

5 THE COURT: Well, you don't object to it on  
6 authentication grounds. Oh, okay.

7 (Jury enters the courtroom.)

8 THE COURT: Mr. Montgomery, you remain under oath, of  
9 course.

10 Mr. Harding, you may proceed whenever you're ready.

11 CONTINUED DIRECT EXAMINATION

12 BY MR. HARDING:

13 Q Yes. Thank you. Good morning, Mr. Montgomery.

14 A Good morning.

15 Q Mr. Montgomery, just to go back to something we did  
16 yesterday. This is your plea agreement in the state, for the  
17 state charge, P-3. And I just want to call your attention. It  
18 says William Montgomery, AKA Michael Rowe. Did you ever use  
19 aliases, Mr. Montgomery?

20 A Yes.

21 Q And was Michael Rowe one of your aliases?

22 A Yes.

23 Q Is there a real Michael Rowe?

24 A Yes.

25 Q Who is it?

1 A My brother.

2 Q Okay. And did you give that name to the police when you got  
3 locked up?

4 A Yes.

5 Q Okay. Did you realize that they would fingerprint you and  
6 find out who you really were?

7 A Yes.

8 Q Okay. Let me go back to where we were yesterday. We were  
9 talking about these surveillances that you conducted on Darius  
10 Spence's apartment during a month and a half period in 2002. Let  
11 me ask you first. You said that Darius knew you for a long time,  
12 that you had known him since childhood basically, is that  
13 correct?

14 A Yes.

15 Q So he obviously knew what you looked like, is that a safe  
16 statement?

17 A Yes.

18 Q How about Tonya Jones-Spence? Did she know what you looked  
19 like? Did you know her?

20 A She knew of me, yes.

21 Q Okay. Do you know, did Darius know what Goo looked like,  
22 Mr. Gardner?

23 A I'm not sure.

24 Q What about Tonya?

25 A No.

1 Q Tonya did not know what Goo looked like?

2 A No.

3 Q What about E? Did either Darius or Tonya know what E looked  
4 like?

5 A Darius might have seen E with me before.

6 Q Okay. But not Tonya?

7 A No.

8 Q So Tonya didn't know either Goo or E, Aaron Holly?

9 A No.

10 Q Okay. Now, we were talking about the stuff that you took  
11 out there with you when you did those surveillances. And you  
12 mentioned that you took duct tape out there. What did you take  
13 duct tape for?

14 A The plan was for Tonya to be duct taped up.

15 Q Why?

16 A So I could come in.

17 Q So who was going to duct tape her up?

18 A Goo and E.

19 Q Okay. And did that include blindfolding or just --

20 A Yes.

21 Q -- tying her up? It did?

22 A Yes.

23 Q What about the latex gloves? You said you took latex gloves  
24 out there. What were those for?

25 A So we wouldn't leave no fingerprints.

1 Q And what about the walkie-talkies?

2 A So we can communicate.

3 Q Okay. Where were you -- were you going to be separated?

4 A For a while, yes.

5 Q How so?

6 A Like I was in the car on the day, on any day, I'm normally  
7 in the car for a while. On the day that that took place, I was  
8 in the car when she pulled up. So I called over the  
9 walkie-talkie and let them know that she was coming into the  
10 building.

11 Q Okay. So was the plan all along that they would go into the  
12 building and you would stay in the car?

13 A No. I was going to come in after they duct taped her up.

14 Q Oh, I see, yes. But until she came, were you going to stay  
15 in the car?

16 A Yes.

17 Q Is that because she could recognize you?

18 A Yes.

19 Q And we talked about, just as we broke yesterday afternoon,  
20 we were talking about the two guns, the .357 and the .40 caliber.  
21 You said that Goo provided both of those guns but he carried only  
22 the .357, is that correct?

23 A Yes.

24 Q And so E carried the .40 caliber?

25 A Yes.

1 Q Was the .40 caliber dirty, Mr. Montgomery?

2 A Yes.

3 Q What does "dirty" mean?

4 A Had a body on it.

5 Q How did you know that?

6 A Goo said it.

7 Q Okay. You said yesterday that you didn't know whether it

8 was the same .40 caliber that Wayne had mentioned having

9 possession of that had three bodies on it, is that correct?

10 A Right.

11 Q But you knew it had at least one body because Goo said it

12 was dirty, is that correct?

13 A Right.

14 Q Now, when you were riding in the car, going out there, where

15 did you keep the guns each time you went out there?

16 A Sometimes we carried them in a black bag. Sometimes they

17 had them in their dip.

18 Q What about if they got out to go in the building? Where

19 would they keep them?

20 A In their dips.

21 Q Can you explain exactly what that means, their dips?

22 A Put the gun in your pants.

23 Q Okay. Would that conceal them?

24 A Yes.

25 Q So would their shirts be untucked or tucked or what?

1 A Untucked.

2 Q I see. Did you have a gun, Mr. Montgomery, when you would  
3 go out there for surveillances?

4 A No.

5 Q Did you have a gun at home?

6 A Yes.

7 Q Any particular reason why you didn't take it out there when  
8 you did these surveillances?

9 A The gun I was carrying at the time was too big.

10 Q What kind of gun was it?

11 A It was a 9 millimeter.

12 Q Okay. How many rounds did it have, did it carry in it?

13 A 30.

14 Q It could carry 30 rounds?

15 A Yes.

16 Q Okay. Is that the one that you later got locked up for, the  
17 federal gun charge on?

18 A Yes.

19 Q What would happen to the, since you carried the guns out  
20 there each day when you were doing these surveillances, five or  
21 six days a week, is that correct?

22 A Yes, something like that, yes.

23 Q What would you do with, at the end of each day?

24 A Take them back to E girlfriend house.

25 Q And where was E's girlfriend's house?

1 A Town and Country Apartments.

2 Q And where are they located?

3 A Across street from Security Mall.

4 Q Okay. Do you know where E, Aaron Holly, kept them inside  
5 his girlfriend's apartment?

6 A Inside the stove.

7 Q Okay. Were you there sometimes when E went to retrieve the  
8 guns or something?

9 A Yes.

10 Q What about the duct tape and the walkie-talkies and the  
11 latex gloves? What happened to that stuff each time you returned  
12 from doing a surveillance on Tonya and Darius's apartment?

13 A It was mostly kept in the car.

14 Q Goo's car?

15 A Yes.

16 Q Who got all that stuff, anyway?

17 A Goo.

18 Q Where did he get the walkie-talkies from?

19 A CVS.

20 Q CVS Pharmacy?

21 A Yes.

22 Q Were you with him when he got them?

23 A Yes.

24 Q Which pharmacy did he go to?

25 A One out Randallstown.

1 Q Okay. Was that specifically for this project you were  
2 doing?

3 A Yes.

4 Q What about the latex gloves? Did Goo get those, too?

5 A Yes.

6 Q Do you know where he got those?

7 A Same spot.

8 Q Okay. And then the duct tape? Do you know, did he get  
9 that, also?

10 A I don't remember.

11 Q Okay. Anyway, that stuff got left in Goo's car each time  
12 you returned, is that correct?

13 A Yes.

14 Q Now, you said before that Mr. Gardner, Goo, was a couple of  
15 years older than you, is that correct?

16 A Yes.

17 Q What about Aaron Holly? Was he older than you or younger  
18 than you?

19 A Younger.

20 Q Okay. Was he, in fact, at this time, in 2002, was he a  
21 juvenile, under 18 years old?

22 A I think so.

23 Q Okay. Who was taller? Mr. Gardner or Aaron Holly?

24 A Aaron.

25 Q Okay. Was he taller than you, too?



1 A Yes.

2 Q Okay. Now let me call your attention to early May, 2002, in  
3 the midst of these surveillances that you were conducting on  
4 Darius and Tonya's apartment. Did you commit another murder in  
5 Baltimore City?

6 A Yes.

7 Q And who, who did you kill?

8 A Terry Cheeks.

9 Q Did anyone pay you to do that?

10 A Yes.

11 Q Who?

12 A Tyree Stewart.

13 Q Why did Mr. Stewart want Terry Cheeks killed?

14 A He killed his cousin.

15 Q Terry Cheeks killed Tyree Stewart's cousin?

16 A Yes.

17 Q So did Tyree Stewart hire you to do it?

18 A Yes. You can say that, yes.

19 Q How much did he pay you?

20 A The original price was 15,000 but I was given 10.

21 Q Okay. You got paid but you didn't get paid in full, is that  
22 correct?

23 A Right.

24 Q Can you tell us where this murder occurred in Baltimore  
25 City?

1 A Lanvale and McKean.

2 Q You say you did this for Tyree Stewart. Was this the same  
3 Tyree Stewart that you had been beefing with ever since 1999, you  
4 told us yesterday?

5 A Yes.

6 Q Did the beef come to an end?

7 A No.

8 Q Does that mean that you were still planning on killing Tyree  
9 Stewart some day?

10 A Yes.

11 Q But in the meantime you were going to do a hit for him; is  
12 that your testimony?

13 A Yes.

14 Q You told us yesterday that you were living on Main Avenue,  
15 is that correct?

16 A Yes.

17 Q And you told us that Aaron Holly had a girlfriend who lived  
18 in the Town and Country Apartments across the street from  
19 Security Mall. Was he living there or just, or was that just his  
20 girlfriend's place?

21 A He was staying there.

22 Q Okay. Did you know where Mr. Gardner was living at that  
23 particular point in time?

24 A No.

25 Q How would you get in touch with him each day or how would he

1 get in touch with you?

2 A I called him or he'll call me.

3 Q Okay. After the murder of Terry Cheeks, did you resume your  
4 surveillances of Darius and Tonya's apartment every day with Mr.  
5 Gardner and Aaron Holly?

6 A Yes.

7 Q You'd still go out there in Mr. Gardner's car?

8 A Sometimes, yes.

9 Q Well, was there another car you used to go out there in  
10 sometimes?

11 A Sometimes I used to get a rental.

12 Q Okay. And sometimes you'd use that car, then?

13 A Right.

14 Q Let me ask you. You said that you would carry the duct tape  
15 and the latex gloves and the walkie-talkies out there when you  
16 were doing surveillances. Were you, were you ready to do this  
17 home invasion robbery on any of these days if the opportunity  
18 arose?

19 A Yes.

20 Q Okay. And yet things dragged on for a month and a half?

21 A Right.

22 Q Can you tell us why the opportunity never arose during all  
23 those times?

24 A Because we was mainly trying to get Darius and really  
25 couldn't get on his schedule.

1 Q You couldn't get on his schedule?

2 A Right.

3 Q You wanted Darius there because you were going to kill him,  
4 is that correct?

5 A Right.

6 Q And you told us before that you thought there would be money  
7 in the apartment, is that correct?

8 A Right.

9 Q Can you give us an idea how much money you thought would be  
10 there?

11 A Momma, Momma told me that Darius wife told him that she seen  
12 him counting something like a hundred thousand. So I had it  
13 being a little under.

14 Q A little under that?

15 A Yeah.

16 Q What about drugs? Did you expect any drugs to be in the  
17 apartment?

18 A Yes.

19 Q What kind of drugs?

20 A Marijuana and heroin.

21 Q Why did you expect those two kinds of drugs to be in the  
22 apartment?

23 A Because I know him to sell marijuana and heroin.

24 Q You knew Darius to sell those two kinds of drugs?

25 A Yes.

1 Q Okay. Now, you also told us before that you weren't  
2 planning on splitting the proceeds of the robbery with Momma, is  
3 that correct?

4 A Right.

5 Q What about the three of you who were doing all these  
6 surveillances and planning to do the robbery together? Did you  
7 have an understanding as to how the proceeds would be split up?

8 A It was never said, but it was going to be an even split.

9 Q Okay. You think that you all just assumed that?

10 A Yes.

11 Q Okay. And did everyone know that Darius was going to be  
12 killed?

13 A Yes.

14 Q What was the plan for Tonya?

15 A She wasn't supposed to get hurt.

16 Q What if something happened?

17 A Then something happened.

18 Q What if there was a problem, for example?

19 A If there was a problem then she, which it was a problem, I  
20 guess, so she got killed.

21 Q Okay. Did you know, what did you think was going to happen  
22 to Tonya prior to the day you actually went out there to do the  
23 robbery?

24 A I had an idea that she probably would be killed.

25 Q Why was that?

1 A Because of who I was with.

2 Q Because of who you were with?

3 A Right.

4 Q Mr. Gardner and E?

5 A Yes.

6 Q Why was being with them a reason why you would think that  
7 Tonya Jones-Spence would be killed?

8 MR. COBURN: Objection.

9 THE COURT: Overruled. You may answer.

10 A E was young and wild, Goo too smart to leave a witness.

11 Q I see. Let's go to the day of the robbery itself, Mr.  
12 Montgomery. Did Mr. Gardner pick you up that day in his car?

13 A Yes.

14 Q And where did he pick you up at?

15 A Main Avenue.

16 Q Was it the same car you told us about before, the Intrepid?

17 A Yes.

18 Q Let me show you Government Exhibit S-58. Does that look  
19 like the car?

20 A Yes.

21 Q And what color does that look like to you, Mr. Montgomery?

22 A Green.

23 Q Okay. What did you do after Mr. Gardner picked you up?

24 A We went to E girlfriend house.

25 Q And what happened then?

1 A We got the guns and E. Got out and went out Tonya and them  
2 house.

3 Q Okay. Now, did Mr. Holly bring the two guns out the way you  
4 say he always did in the surveillances?

5 A Yes.

6 Q Was Goo's attitude any different that day?

7 A Yes.

8 Q How so?

9 A He was impatient.

10 Q What led you to conclude he was impatient?

11 A He said, we going to get the bitch today.

12 Q We're going to get the bitch today?

13 A Yes.

14 Q And who did you understand him to mean by that?

15 A Going to grab Tonya.

16 Q Well, what did you say in response to that?

17 A Fuck it.

18 Q Is that an agreement or a disagreement?

19 A Agreement.

20 Q And so, but what if Darius wasn't there?

21 A I kill him on the streets later.

22 Q I see. So the plan was modified. You weren't necessarily  
23 going to wait for Darius to get home, is that it?

24 A Right.

25 Q And that was okay with you?

1 A Yes.

2 Q What about Aaron Holly? Did he agree?

3 A Yes.

4 Q Did you have all the other stuff that you've told us about,  
5 the rubber gloves and the walkie-talkies and the duct tape?

6 A Yes.

7 Q Let me show you S-36. Does that resemble one of the  
8 walkie-talkies that you guys were using at that time?

9 A Yes.

10 Q And you said Goo purchased this at a CVS Pharmacy especially  
11 for this operation?

12 A Yes.

13 Q I'm going to show you S-2. Does this resemble the duct tape  
14 you guys took out there?

15 A Yes.

16 Q And this is S-53. Okay. Does this resemble the latex  
17 gloves that you guys were using at that time?

18 A Yes.

19 Q Did it have that black powder on it at the time?

20 A No.

21 Q Okay. Do you know what that black powder is, from your  
22 experience?

23 A The stuff they use to fingerprint you.

24 Q Okay. What time of day was it when you guys drove out there  
25 to Tonya and Darius's apartment?



1 A Afternoon.

2 Q Do you have any more precise idea, just estimating, but  
3 early afternoon, late afternoon, what?

4 A Maybe around like 3:30.

5 Q Okay. Was Mr. Gardner driving?

6 A Yes.

7 Q What did you do when you got to Tonya and Darius's building?

8 A I called Momma.

9 Q Where were you sitting in the car?

10 A In the back seat.

11 Q Did you call him from the car?

12 A Yes.

13 Q Why did you call him?

14 A Goo told me to call him and see where Tonya was at.

15 Q I see. Did you reach Momma?

16 A Yes.

17 Q And did he give you information?

18 A Yes.

19 Q About where Tonya was at that point?

20 A Momma said she was on her way home.

21 Q Okay. So what did you do then?

22 A Goo and E got out the car and went to their normal spot. I  
23 got --

24 Q Okay. Just one moment. Did Momma happen to say why he knew  
25 that she was on her way home?

1 A I think he said he just got off the phone with her.

2 Q Do you know, was he still having this affair with her at the  
3 time?

4 A Yes.

5 Q Okay. Then you said Goo and E got out of the car, is that  
6 correct?

7 A Yes.

8 Q Do you remember anything about the clothing they had on that  
9 day?

10 A Everybody had hats on. E had a red hat on.

11 Q Okay. You had a hat on, too?

12 A Yes.

13 Q Who had the, did you have -- did they take their two guns  
14 with them?

15 A Yes.

16 Q Who took the .357 magnum?

17 A Goo.

18 Q Was that the gun he always carried?

19 A Yes.

20 Q And who took the .40 caliber semiautomatic?

21 A E.

22 Q That's the one you said was dirty, is that correct?

23 A Yes.

24 Q Do you know, was the reason why Goo didn't want to carry the  
25 .40 caliber, was that because it was dirty?

1 MR. COBURN: Objection.

2 THE COURT: Overruled. If you know.

3 A I don't know.

4 Q Did you see where they put their guns when they left the  
5 car?

6 A They put them in their dips.

7 Q Okay. Where did they go? Let me ask you first, where was  
8 your understanding of where they were going to go?

9 A Into the little basement part of the apartment building.

10 Q Okay. I have a map over here that I'm going to pull out, if  
11 I may. Actually, it's not a map. It's a photograph.

12 You ever used one of these laser pointers, Mr.  
13 Montgomery? You just press the button, a little red dot appears  
14 on the map. Have you had a chance to look at this photograph  
15 before?

16 A Yes.

17 Q Okay. Could you take this, then, and indicate where on that  
18 photograph you parked or Goo parked the Intrepid that day?

19 A (Indicating.)

20 Q Okay. In that parking lot?

21 A Yes.

22 Q And did you tell us where Goo and E were headed, where they  
23 were going to go when they got out of the car?

24 A They were going into the apartment building.

25 Q Any particular place in the apartment building?

1 A In the basement.

2 Q Why in the basement?

3 A It had a little storage room or something in there.

4 Q Okay. What were they going to do when Tonya came home?

5 A Follow her up the stairs and grab her.

6 Q And did there come a time when Tonya did, in fact, show up?

7 A Yes.

8 Q Where were you when that happened?

9 A I was still in the parking lot.

10 Q In the car?

11 A Yes.

12 Q And so did you see her drive up?

13 A Yes.

14 Q What did you do when you saw that?

15 A I called Goo or E on the walkie-talkie, let them know that  
16 she was coming in the building.

17 Q Did you reach them?

18 A Yes.

19 Q What happened then?

20 A Then I moved the car.

21 Q Then you moved the car. Why did you move the car?

22 A I always move the car.

23 Q Did you move it even when you did surveillances out there?

24 A Some days, yes.

25 Q Can you show us by using that pointer again where you moved

1 the car to?

2 A (Indicating.)

3 Q Okay. For the record, you moved it to a parking lot above,  
4 north of the one where you originally parked. And it's marked  
5 Grey Fox Road on the, on the photograph, is that correct?

6 A Yes.

7 Q Let me show you, also, another photograph, which I'm going  
8 to put on the screen. You remember being shown this photograph  
9 once before, Mr. Montgomery?

10 A Yes.

11 Q And did you sign it on the back?

12 A Yes.

13 Q Approximate location of Dodge Intrepid as indicated by  
14 William Montgomery?

15 A Yes.

16 Q And it says X equals that, right? Did you make this X right  
17 here on the parking lot?

18 A I don't know.

19 Q You don't know whether you or someone else did?

20 A Right.

21 Q But was that the approximate location of where you parked  
22 first when you got to the location?

23 A Right.

24 Q And then when you moved it, is this the Grey Fox Road  
25 parking lot where you moved to a little further north?

1 A Over there.

2 Q You can actually point at the screen and it will actually  
3 record where it is you're pointing, if you want to point for us  
4 where you parked the second time. Okay.

5 Now, why was it that you moved?

6 A I moved in case something went down, nobody get a look at  
7 the car.

8 Q Did you just stay in the car, then, for a little while on  
9 Grey Fox Road?

10 A Yes.

11 Q What happened then?

12 A I called back to them, didn't get no answer.

13 Q You called back on the walkie-talkie?

14 A Yes.

15 Q By the way, when you called Momma from the, from the car to  
16 find out where Tonya was, you didn't use your walkie-talkie, did  
17 you?

18 A No.

19 Q Because he didn't have a walkie-talkie?

20 A No.

21 Q Whose phone did you use?

22 A Goo's.

23 Q Goo had a cell phone?

24 A Yes.

25 Q Okay. When you got out of the car to go up to the building,

1 can you tell us where you went?

2 A When I got out?

3 Q Yeah.

4 A I went inside the building, almost up the first flight of  
5 the steps, stopped because somebody on the second floor apartment  
6 door was wide open. So I started coming back down. Coming out  
7 the building, I started hearing shots.

8 Q Okay. I've got on the screen right now Government Exhibit  
9 S-56. Do you recognize that?

10 A Yes.

11 Q What is it?

12 A That look like Tonya building.

13 Q Is that the door you went into?

14 A Yes.

15 Q You say you went up, you started to go up the first flight  
16 of stairs, is that correct?

17 A Yes.

18 Q And you can actually see the stairs in the picture, is that  
19 correct?

20 A Right.

21 Q Which one was Tonya's apartment? Was it on the first floor  
22 or the second floor or what?

23 A It was the third floor.

24 Q Third floor. Is there another apartment down here below,  
25 below here, like a garden apartment?

1 A I believe so.

2 Q Okay. So this is actually a second floor apartment and this  
3 is the third floor?

4 A Yes.

5 Q So you say you started to go up this first set of stairs,  
6 correct?

7 A Correct.

8 Q And then what happened?

9 A Somebody door was wide open. So I turned around.

10 Q Somebody on the second floor?

11 A Yes.

12 Q So it wasn't the door to Tonya's apartment?

13 A No.

14 Q Why did you turn around?

15 A Didn't want to be recognized.

16 Q Okay. What happened then?

17 A As I was coming out, shots were being fired, she was coming  
18 over the balcony.

19 Q Okay. So let me see if I have this right. You came back  
20 out this door, is that right?

21 A Right.

22 Q Did you look around to see if you could see anything?

23 A Yes.

24 Q Where did you look?

25 A Everywhere.



1 Q Were there other people around on the yard at that time?

2 A Yes.

3 Q Were there any kids, did you notice?

4 A Yes, it was kids out.

5 Q Okay. Now, you say that you heard shots and Tonya was  
6 coming over the balcony. Is that what you said?

7 A Yes.

8 Q Which balcony was her balcony?

9 A This.

10 Q This one right here?

11 A Yes.

12 Q Was she at this end of the balcony or this end of the  
13 balcony?

14 A The other end.

15 Q This end right here?

16 A Yes.

17 Q And you're talking about when you were coming out the door,  
18 she was coming over the balcony here?

19 A Right.

20 Q Did you make eye contact with her?

21 A When she hit the ground.

22 Q Oh. Before she hit the ground, you did not make eye contact  
23 with her?

24 A No.

25 Q Was she saying anything when she was coming over the

1 balcony?

2 A Not that I remember.

3 Q Did it appear to you that she jumped over the balcony or  
4 fell over the balcony?

5 A It looked like she was jumping but tried to catch herself.

6 Q And you say there were shots being fired at that time,  
7 correct?

8 A Yes.

9 Q Could you see who was doing the shooting?

10 A No.

11 Q And then she fell, is that correct?

12 A Right.

13 Q All the way to the ground?

14 A Right.

15 Q And then you made eye contact with her?

16 A Right.

17 Q Did she say anything to you?

18 A No.

19 Q Did you say anything to her?

20 A No.

21 Q What did you do?

22 A Kept walking.

23 Q You kept walking?

24 A Yes.

25 Q Which direction?

1 A Back towards the car.

2 Q Did you come down this walkway or did you cut across the  
3 lawn or what?

4 A I came down the walkway.

5 Q Right down here?

6 A Right.

7 Q Did you turn around? Could see what happened after that?

8 A No.

9 Q So where exactly did you go?

10 A To the car.

11 Q Which was parked still in that parking lot marked Grey Fox  
12 Road on the photograph behind you, is that correct?

13 A Yes.

14 Q Did there come a time when you heard something more?

15 A I heard more shots.

16 Q How many more shots, do you remember?

17 A No.

18 Q And did you turn around?

19 A No.

20 Q If you had turned around, were you in a position where you  
21 could have seen what was going on?

22 A No.

23 Q Why?

24 A I was almost at the car.

25 Q You were almost at the car. And was there a building

1 between you and where Tonya's place was at that point?

2 A Yes.

3 Q Did there come a time when you spoke to or saw Mr. Gardner  
4 or Mr. Holly again?

5 A Yes. I saw them.

6 Q You saw them? Sorry?

7 A I saw them first.

8 Q Okay. What were they doing when you saw them?

9 A They was running across the parking lot.

10 Q Which parking lot? The one where you were parked or the one  
11 where you first parked?

12 A The one where Goo first parked.

13 Q The one where Goo first parked. I see. So what did you do?

14 A I was trying to call them on the walkie-talkies to let them  
15 know that I moved the car.

16 Q Did you get through to them?

17 A Not at that time, no.

18 Q Okay. So what did they do?

19 A Kept running.

20 Q Kept running where? Could you see where they were running  
21 toward?

22 A No. I started moving the car.

23 Q Okay. Were you in your car already by the time you were  
24 trying to talk to them on the walkie-talkie?

25 A Yes.

1 Q So you started to move the car. Where were you going to go?

2 A I was trying to come around to catch them.

3 Q Okay. What happened then?

4 A I couldn't find them.

5 Q Did you try to communicate with them by walkie-talkie again?

6 A Yeah. I tried to communicate but we was out of contact for  
7 a while. Then we came back in contact.

8 Q When you made contact with them, where were they?

9 A They said they was in some woods behind a hospital.

10 Q Did they say anything else?

11 A Come get them.

12 Q Did you?

13 A Yeah, I was trying.

14 Q You were driving around on the streets looking for them?

15 A Right.

16 Q Okay. But you weren't able to find them, is that correct?

17 A Found them too late.

18 Q You found them too late?

19 A Yes.

20 Q Why?

21 A By the time I found them, there was a police car sitting  
22 outside the woods and one behind me.

23 Q There was a police car behind you?

24 A Yes.

25 Q Following you?

1 A Yes.

2 Q What did you do when a police car started following you?

3 A I told them get out the woods. I told them it was a car  
4 behind them, get out the woods. Then I threw the walkie-talkie  
5 out the window.

6 Q Why did you throw the walkie-talkie out the window?

7 A Didn't want to be caught with it.

8 Q Okay. What happened then?

9 A I kept driving, turned into some parking complex, parked,  
10 jumped out, went into a building. Police kept going.

11 Q Why did you pull into some parking complex and get out?

12 A I tried to act like I was going somewhere.

13 Q Oh, so were you afraid the police were watching you?

14 A Yeah, I thought they was going to pull me over.

15 Q So what did you do when you got out in the parking lot?

16 A Went into a building.

17 Q Was this, was this the building where the shooting had taken  
18 place or some other building?

19 A Some other place.

20 Q Was it in the vicinity?

21 A Yes.

22 Q Does it appear on that aerial photograph or is it off the  
23 photograph?

24 A It's off.

25 Q Okay. How long did you spend in that parking lot?

1 A Not long. I walked around the area.

2 Q You walked around the area. Okay. And then what did you  
3 do?

4 A I waited about an hour, jumped back in the car, went home.

5 Q You waited an hour?

6 A Yeah, about an hour.

7 Q How come so long?

8 A Just to make sure.

9 Q Okay. And then you went home, you say?

10 A Right.

11 Q Back to Main Avenue?

12 A No.

13 Q Where?

14 A To my girlfriend house.

15 Q Okay. Where was that located?

16 A Normandy Avenue.

17 Q And can you tell us the name of your girlfriend?

18 A Brittany.

19 Q Where is Normandy Avenue located?

20 A Edmondson Village.

21 Q So down in Southwest Baltimore?

22 A Right.

23 Q Did you speak to Brittany when you got back there?

24 A Yes.

25 Q Did you tell her what happened?

1 A Didn't have to.

2 Q You didn't have to?

3 A No.

4 Q Why not?

5 A She seen it on the news.

6 Q So what did you do when you got home?

7 A Chilled for a minute. Then I left and went to Main Avenue.

8 Q What did you do when you got to Main Avenue?

9 A Called Momma.

10 Q Called Momma. Did you reach him?

11 A Yes.

12 Q And why did you call him?

13 A To let him know what happened, which I did, and tell him  
14 come meet me so we can talk.

15 Q Did you want to meet him right away?

16 A Yes.

17 Q Did he agree to meet you?

18 A Yes.

19 Q What happened then?

20 A He met me. By the time he met me, Tonya had died. He told  
21 me that. He asked me was I still going to get Darius. I told  
22 him yeah. I told him give me, give me some crack so I can, while  
23 I'm laying low, something to sell.

24 Q Well, what did he say when you asked him for some crack to  
25 sell?



1 A He was cool with it.

2 Q He was supposed to pay you some money, too, wasn't he,  
3 for -- oh, that was for killing Darius, which you hadn't done  
4 yet?

5 A Right.

6 Q So did he agree to give you some crack?

7 A Yes.

8 Q Any other discussion with him at that first meeting?

9 A Not that I recall.

10 Q Where did you meet him, anyway?

11 A Up Liberty Heights.

12 Q Some particular spot?

13 A It's a little shopping center, up there near Garrison.

14 Q Liberty Heights near Garrison. Okay. Well, did he, in  
15 fact, get you some crack?

16 A Yes.

17 Q How long did it take him to get the crack to you?

18 A A couple hours maybe.

19 Q Where did you meet him when a couple of hours passed?

20 A In the same shopping center.

21 Q And how much crack did he have for you?

22 A He brought me a half ounce.

23 Q Did you have any discussion about Mr. Gardner and Mr. Holly?

24 A Yes. He asked me what was up with them. I told him don't  
25 worry about them, they soldiers.

1 Q You told him, don't worry about them, they're soldiers.  
2 What does that mean?

3 A He was worried would they tell.

4 Q And what does "soldier" mean? That they're not going to  
5 tell?

6 A Right.

7 Q Okay. Now, you were in Mr. Gardner's car this whole time,  
8 is that correct?

9 A Yes.

10 Q What did you do with the car?

11 A I parked it out back of the apartment I was staying at on  
12 Main.

13 Q Was that the one on Normandy or the one on Main Avenue?

14 A On Main.

15 Q Okay. How long did you keep possession of the car?

16 A I think I had it for about a week before his brother came  
17 and got it.

18 Q How did his brother find you to get the car back?

19 A Goo told him.

20 Q Who's his brother? Do you know his name?

21 A No.

22 Q Had you known him before?

23 A I met him one time before.

24 Q Okay. So he just came over to Main Avenue and picked up the  
25 car one day?

1 A Yes.

2 Q By the way, let me just back up one minute. You remember  
3 signing a photograph and saying that's E shirt, Mr. Montgomery?

4 A Yes.

5 MR. MARTIN: What is that exhibit number?

6 Q This is S-56. Does that look like the shirt that Aaron  
7 Holly had on that day?

8 A Yes.

9 Q Did there come a time when you got arrested?

10 A Yes.

11 Q Do you remember the day you got arrested?

12 A July 2nd, 2002.

13 Q So that would be three, three weeks or so after this murder  
14 and robbery, is that correct?

15 A Yes.

16 Q Excuse me. Sorry, Your Honor. This should be S-67, not  
17 S-56.

18 THE COURT: The photograph of the shirt, T-shirt?

19 MR. HARDING: Yes.

20 THE COURT: All right.

21 BY MR. HARDING:

22 Q And I'm going to re-label S-57, the photograph of the  
23 parking lot, as S-68?

24 THE COURT: So noted.

25 Q So you got arrested on July 2nd. What were you arrested

1 for?

2 A Violation of probation.

3 Q And then I believe you told us yesterday about how, after  
4 you were picked up for that, did they discover your 9 millimeter  
5 gun in one of your apartments?

6 A Yes.

7 Q Where was it, anyway? Main Avenue or Normandy or what?

8 A Normandy.

9 Q And so you picked up a federal gun charge at that point, is  
10 that correct?

11 A Yes.

12 Q And sometime after that, you were also charged with murder  
13 of Terry Cheeks, am I right?

14 A Yes.

15 Q But within about 15 days, you signed this letter called P-17  
16 and started to cooperate with the authorities, is that correct?

17 A Yes.

18 Q So were you interviewed by detectives?

19 A Yes.

20 Q Let me call your attention to the first interview. What did  
21 you tell them about in the first interview you did with them?

22 A The first interview?

23 Q Yeah.

24 A They was asking me about Tyree Stewart.

25 Q And the Terry Cheeks murder?

1 A Yes.

2 Q Did you tell them what you knew about it?

3 A Yes.

4 Q Did you have subsequent interviews in the days that followed  
5 and the weeks that followed?

6 A Yes.

7 Q Did you tell them about this murder of Tonya Jones-Spence?

8 A Yes.

9 Q How did it come up?

10 A I told them.

11 Q They didn't ask you about it?

12 A No.

13 Q Did they have any idea that you were involved in it?

14 A No.

15 MR. COBURN: Objection, no foundation.

16 THE COURT: Overruled.

17 Q Did you also disclose in those early interviews your whole  
18 history with Mr. Mitchell and Mr. Gardner and Mr. Martin?

19 A Yes.

20 Q Did you disclose what Mr. Gardner told you about Boo pushing  
21 the wrong button on a telephone or the victim pushing the wrong  
22 button, one or the other?

23 MR. CROWE: Objection, Your Honor.

24 THE COURT: Rephrase the question, please.

25 Q Did you disclose in your initial interviews the information

1 you had learned from Mr. Gardner about the murder charge that was  
2 then pending against --

3 MR. CROWE: Objection.

4 Q -- Mr. Martin and Mr. Mitchell?

5 THE COURT: The objection's overruled. You may answer.

6 THE WITNESS: Yes.

7 Q Did you tell them about the fake alibi?

8 MR. CROWE: Objection.

9 A Yes.

10 THE COURT: Objection's overruled.

11 Q Did you tell them about what Mr. Gardner had told you about  
12 the Bo's voice being on the recording, talking about not checking  
13 their pockets?

14 MR. LAWLOR: Objection.

15 THE COURT: Overruled.

16 A Yes.

17 Q Did you tell them what Mr. Gardner had told you about not  
18 believing what the police said about their leaving drugs in the  
19 car after that murder?

20 A Yes.

21 Q Did you run into Mr. Gardner after you were locked up?

22 A Yes.

23 Q Where?

24 A DOC.

25 Q DOC?

1 A Yes.

2 Q Department of Corrections?

3 A Yes.

4 Q Did he tell you, did he talk to you about the charge against  
5 him?

6 A A little bit, yes.

7 Q What did he say?

8 A Said it was looking good.

9 Q It was looking good?

10 A Yes.

11 Q What did you understand that to mean?

12 A That he had a chance of beating it.

13 Q Okay. Did you have a later meeting with some detectives  
14 where they showed you some photo arrays?

15 A Yes.

16 Q Let me show you Government Exhibit S-62. Is that your  
17 signature in the top left-hand corner, next, right above a  
18 photograph?

19 A Yes.

20 Q Actually, it's sort of fuzzy. You see the date there, Mr.  
21 Montgomery?

22 A Yes.

23 Q What is it?

24 A December 17th, '03.

25 Q And on the back, is this your writing?

1 A Yes.

2 Q I saw Wayne, William Montgomery, is that correct?

3 A Yes.

4 Q This is S-63. Is that your signature above another  
5 photograph?

6 A Yes.

7 Q Did you write, Goo, William Montgomery?

8 A Yes.

9 Q And here's one, S-64. And your signature doesn't appear  
10 anywhere on those particular photographs, does it, Mr.  
11 Montgomery?

12 A No.

13 Q Did you write no ID?

14 A Right.

15 Q This is S-65. Is that your signature at the top right-hand  
16 corner, Mr. Montgomery?

17 A Yes.

18 Q These are all the same date, 12/17/03, correct?

19 A Yes.

20 Q And did you write, I think it is Bo, William Montgomery?

21 A Yes.

22 Q And then here's S-66. Is that your signature in the lower  
23 right, Mr. Montgomery?

24 A Yes.

25 Q And did you write, it looks like Bo, William Montgomery?



1 A Yes.

2 Q Did you recently have an opportunity to look at the Stop  
3 Snitching video, Stop Snitching II video, Mr. Montgomery, or a  
4 portion of it?

5 A Yes.

6 Q What I'm going to do, Mr. Montgomery, is play just the  
7 beginning of the video and then skip, I think, 10 or 15 minutes  
8 into the video and play a particular segment of it. Okay?

9 A Um-hum.

10 MR. MARTIN: Just for the record, objection.

11 THE COURT: Objection is noted. Overruled. We're not  
12 getting the video. My law clerk will try to give you some  
13 assistance, Mr. Harding. Function five.

14 MR. COBURN: Or 8.

15 THE COURT: Or 10 or 8. Okay. Think we got it now.

16 MR. HARDING: I can't wait to tell my son that I did  
17 this, Your Honor.

18 THE COURT: He won't believe you.

19 MR. HARDING: Now there's no sound.

20 (Tape playing.)

21 THE COURT: Is it broadcasting through the speakers?

22 MR. HARDING: Can you hear it?

23 THE COURT: Can you pull the mike down a bit?

24 (Video playing.)

25 MR. HARDING: Okay. Now I'm going to go to a

1 particular segment, Mr. Montgomery.

2 (Video playing.)

3 MR. HARDING: I'm trying to back it up a little bit,  
4 Your Honor.

5 (Video playing again.)

6 BY MR. HARDING:

7 Q Do you know this guy who's holding up the cell phone right  
8 there, Mr. Montgomery?

9 A Yes.

10 Q Who is he?

11 A Tall Vials.

12 Q Tall Vials?

13 A Yes.

14 Q That sounds like a street name rather than a birth name, is  
15 that correct?

16 A Right.

17 Q How do you know him?

18 A From the neighborhood.

19 Q Which neighborhood are you talking about?

20 A Edmondson Avenue.

21 Q Did you ever do crimes with that guy?

22 A Yes.

23 Q What crimes?

24 A We did some little robberies.

25 Q Little robberies?

1 A Yes.

2 Q Did you recognize the, or can you identify the voice on the  
3 cell phone?

4 A No.

5 Q What does the phrase "put a name out there" or "put that  
6 name out there", what does that mean?

7 A Let it be known.

8 Q Let it be known. And can you tell us why people want to put  
9 a name out there?

10 MR. MARTIN: Objection.

11 MR. LAWLOR: Objection, Your Honor.

12 THE COURT: Overruled. You may answer.

13 A I guess so it wouldn't be safe for us on the streets no  
14 more.

15 Q Okay. Of the names that he mentioned, do you know who TM  
16 is?

17 A No.

18 Q Do you know who Darryl Bacon is?

19 A Yes.

20 Q And it said Little Will from around Laretta and Monroe. Is  
21 that where you used to live?

22 A Yes.

23 Q That's where your grandmother's house was, as I recall, is  
24 that correct?

25 A Yes.

1 Q And then they mentioned a couple of other names. Aaron  
2 Brown and -- I'm sorry -- Aaron Butler and Tavon Brown. Do you  
3 know either of those guys?

4 A Tavon Brown.

5 Q Where do you know him from?

6 A He my cell buddy.

7 Q He's your cell buddy?

8 A Yes.

9 Q Is he a federal cooperator, also?

10 A Yes.

11 MR. MARTIN: Your Honor, can we take this off the  
12 screen?

13 THE COURT: You done with the exhibit, Mr. Harding?

14 MR. HARDING: Yes, I am, Your Honor. I'm going to get  
15 it off the screen. And I am done with my direct of Mr.  
16 Montgomery.

17 THE COURT: Thank you. Members of the jury, we'll take  
18 our luncheon recess at this time. I'm going to ask you to be  
19 back in the jury room, it's now 12:31, I'm going to ask you to be  
20 back in the jury room in 60 minutes, by 1:30 this afternoon.  
21 Have no discussion about the case. Please leave your note pads  
22 on your chairs.

23 Jury is excused for 60 minutes.

24 (Jury exits the courtroom.)

25 THE COURT: All right. Counsel, we will resume

1 hopefully right at 1:30 and go until about 2:45, 2:50. But I  
2 guarantee counsel we will not sit past 3:00. Yes, Mr. Kurland.

3 MR. KURLAND: Your Honor, this is Mr. Coburn's witness.  
4 But there's a legal issue. We sent a memo saying that I'm going  
5 to argue some of the legal issues with respect to this. I can do  
6 it right now.

7 THE COURT: Go ahead.

8 MR. KURLAND: In the government's direct, they elicited  
9 from Mr. Montgomery a statement concerning Mr. Gardner being a  
10 part --

11 THE COURT: Can you speak into the microphone?

12 MR. KURLAND: Oh, sure. I'm sorry. On the  
13 government's direct of Mr. Montgomery, they elicited from Mr.  
14 Montgomery concerning Mr. Gardner's arrest on the Spence homicide  
15 and they, and Mr. Montgomery said that Mr. Gardner responded that  
16 that case was looking good, he had a chance to beat it.

17 That is highly inflammatory. The jury is now left with  
18 the impression --

19 THE COURT: I didn't hear an objection. I specifically  
20 did not hear an objection to --

21 MR. KURLAND: I did not understand that that, that that  
22 testimony is nowhere -- I did not expect that.

23 THE COURT: I didn't, either. But I didn't hear an  
24 objection.

25 MR. KURLAND: Well, but the fact is they elicited,

1 they've opened the door. And I believe that now gives us the  
2 right to put in the evidence that the Court has earlier ruled  
3 wasn't going to come in. This jury needs to know --

4 THE COURT: Oh, I see. You're going back to the  
5 question of Mr. Gardner's conviction.

6 MR. KURLAND: Or the alternative, Your Honor. This is  
7 something Mr. Coburn and I would have to think about, is that in  
8 addition to a very specific limiting or, quote, "curative  
9 instruction", this is also going to have to be dealt with, if the  
10 Court's not going to allow us to get in the prior conviction  
11 status. Because the jury's now obviously misled. He's going to  
12 beat it. Now he's sitting in court several years later. The  
13 connection as to, well, he must have beaten it or he certainly  
14 wasn't convicted of it is now firmly in the jury's mind.

15 If the Court is not going to revisit the prior  
16 conviction issue, then I think Mr. Coburn and I have to try to  
17 come up with, for the Court's consideration, a combination of  
18 both curative instructions now and also some very, very, very  
19 detailed both dual sovereignty and limiting instructions with  
20 respect to that.

21 THE COURT: Okay. Obviously, I suspect that Mr.  
22 Coburn's probably not even going to finish his cross of Mr.  
23 Montgomery this week, meaning today. So we will have time to  
24 consider that.

25 I'm loath to revisit my decision on the admissibility

1 of Mr. Gardner's conviction and sentence simply on the basis of  
2 an un-objected to statement attributed to Mr. Gardner by Mr.  
3 Montgomery. Frankly, I would have sustained the objection. But  
4 I'll consider whatever you want to submit. But certainly, it  
5 doesn't open the door this afternoon for Mr. Coburn in his cross  
6 examination to elicit --

7 MR. KURLAND: We'll submit something in writing. I  
8 will also talk to Mr. Coburn during the break. I will say, Your  
9 Honor, just so the record is very clear on this, the government  
10 who, again, was vociferously arguing that the prior conviction  
11 should be inadmissible because it was irrelevant, they elicited  
12 this on direct.

13 I mean, again, the status, this is clear testimony, a  
14 surprise to us, that the government clearly elicited on direct  
15 with respect to Mr. Gardner's, the status of the state court  
16 conviction. So --

17 THE COURT: Well, in fact, of course the jury doesn't  
18 have this level of sophistication. But the question was, did you  
19 encounter Mr. Gardner in the Division of Correction? Now, the  
20 only way a person goes to the Division of Correction is if he's  
21 been convicted of a crime and sentenced, generally speaking. So  
22 again, I'm not suggesting that the jury has that level of  
23 sophistication.

24 So, I mean, on that basis, you're wrong to suggest that  
25 the jury would necessarily infer that he, quote-unquote, "beat

1 the charge" because, in fact, he was in the Division of  
2 Correction. Now, I understand he may have been in the Division  
3 of Correction for any number of different charges, indictments,  
4 convictions, and so forth.

5 But the question was, you encountered him in the  
6 Division of Correction.

7 MR. KURLAND: Your Honor, we're more concerned with  
8 looking good, he had a chance to beat it. And again, here we are  
9 six years later --

10 THE COURT: No. But from all that appears, he'd  
11 already been convicted.

12 MR. KURLAND: No, Your Honor.

13 THE COURT: Mr. Gardner may be sitting there right now  
14 thinking he's going to beat the charge, I mean, even though the  
15 Supreme Court has denied cert or no cert petition was sought. I  
16 take --

17 MR. KURLAND: Your Honor, that wasn't before --

18 THE COURT: I take your point. I take your point.  
19 There was no date put on it. It was the Division of Correction,  
20 and there was no objection.

21 So I will consider anything and everything you want to  
22 submit. But for purposes of Mr. Coburn's cross examination this  
23 afternoon, the Court has not modified its ruling.

24 MR. COBURN: Your Honor --

25 THE COURT: Yes, Mr. Coburn.



1 MR. COBURN: Thank you so much, Your Honor. I just  
2 want to proffer a couple of things about this. First of all --

3 THE COURT: Why are you proffering? Why aren't we all  
4 going off to get a quick lunch?

5 MR. COBURN: Can Your Honor give me 30 seconds?

6 THE COURT: Okay. Go ahead.

7 MR. COBURN: I apologize for delaying it. First of  
8 all, it would have been my job to object, not Mr. Kurland. This  
9 is my witness.

10 THE COURT: Well, I'm not getting into that. All I'm  
11 saying, there was no objection.

12 MR. COBURN: Sure, there wasn't. From my point of  
13 view, the question was calling for an admission from a party  
14 opponent. What he testified to was nowhere in any prior  
15 statement. It was a surprise to me. As a tactical matter, I was  
16 not going to call attention to the jury, the jury's, adding  
17 attention to it after the cat was out of the bag. But I do move  
18 to strike it now.

19 THE COURT: All right.

20 MR. LAWLOR: Can I just have ten seconds?

21 THE COURT: Yes, Mr. Lawlor.

22 MR. LAWLOR: Mr. Martin made an objection to the  
23 admission of the Stop Snitching video. I believe we took it up  
24 prior to trial.

25 THE COURT: We did. And I specifically asked everybody

1 during the last recess, was there an objection to the  
2 authentication of the exhibit, and nobody said yes.

3 MR. LAWLOR: I think I --

4 THE COURT: There was an objection, I believe, from Mr.  
5 Pyne or Mr., and Mr. Coburn having to do with 403, inflammatory  
6 and so forth. And I overruled that objection. Mr. Martin  
7 objected.

8 MR. LAWLOR: My question is, the rule has been, and I  
9 just want to confirm this, because I might have dozed off for a  
10 minute, but Mr. Martin's objection, like all objections, apply to  
11 all defendants?

12 THE COURT: Yes. Absolutely. Absolutely.

13 MR. LAWLOR: That's it.

14 THE COURT: Okay. We're in recess until 1:30.

15 (Luncheon recess.)

16 THE COURT: Can we get the witness back, please? Mr.  
17 Coburn, thank you for your letter. I very much enjoy getting  
18 letters from you. Please, don't, I mean it. Don't ever  
19 apologize for writing to the Court. The government still  
20 objects?

21 MR. HARDING: Yes, Your Honor.

22 THE COURT: Yeah. The objection's sustained, Mr.  
23 Coburn. You know what it reminds me of? When I was on the  
24 Circuit Court, there was this old sort of taxicab lawyer who, who  
25 used to, what he would do is he would use the easel and in effect

1 try to create his own transcript. Have you ever seen that  
2 technique?

3 MR. COBURN: I'm tried it.

4 THE COURT: You tried it? Yeah, that's what you're  
5 trying to do here, kind of. You know, ask the witness a question  
6 and he'd put the answer up on the easel.

7 MR. COBURN: I have.

8 THE COURT: You know, you know. Look, the list is not  
9 relevant and material. It's what the witness said during any  
10 interview. And the list itself is not impeaching. Doesn't  
11 matter how many statements he gave. What's impeaching is if he  
12 was inconsistent in any of his statements.

13 MR. COBURN: Understood, Your Honor. I do have, I  
14 should let Your Honor know. I've got a little bit of an  
15 audiotape of one of his prior statements, which if he's  
16 inconsistent, I would propose to use just like a transcript. I'm  
17 assuming it doesn't raise an issue. It's just like using a  
18 transcript.

19 THE COURT: One of the taped -- I don't see any problem  
20 with that.

21 MR. COBURN: Thank you, Your Honor.

22 THE COURT: Are you all plugged in and ready to go?

23 MR. COBURN: Plugged in and ready to go.

24 THE COURT: All right. Ms. Rhodes, are you okay?

25 MS. RHODES: I'm feeling better. Make it till three.

1 THE COURT: I said you could leave if you weren't up to  
2 sitting here for another hour.

3 MS. RHODES: Thank you. No, I would rather --

4 MR. LAWLOR: She doesn't trust me, judge.

5 THE COURT: One can see why, Mr. Lawlor, sometimes.

6 MR. LAWLOR: I was waiting for that.

7 THE COURT: I hope you feel better. And I told the  
8 jury you weren't feeling well. If you need to leave, feel free.  
9 While we're waiting, Mr. Harding? What's it look like for next  
10 week?

11 MR. HARDING: Actually --

12 THE COURT: How are we doing, in other words?

13 MR. HARDING: Oh, well, we're still behind schedule but  
14 we're, I think, more than halfway done.

15 THE COURT: More than halfway?

16 MR. HARDING: Yes, Your Honor. Mr. Hanlon and I  
17 haven't worked out witness list for next week so I was hoping to  
18 e-mail that information to defense counsel.

19 THE COURT: Sure. Please do that before the end of the  
20 day tomorrow.

21 MR. HARDING: Okay.

22 THE COURT: But you think more than halfway?

23 MR. HARDING: I do, yes, Your Honor.

24 (Witness enters the courtroom.)

25 THE COURT: Okay. All right. Jury, please. Ms.

1 Rhodes, I don't remember whether I gave you and Mr. Lawlor a  
2 deadline or not, but I've been expecting the formal written  
3 proffer. So if you could work on that over the weekend.

4 MS. RHODES: Certainly, Your Honor.

5 THE COURT: You know what I'm referring to?

6 MS. RHODES: Yes. Yes.

7 (Jury enters the courtroom.)

8 THE COURT: Good afternoon, ladies and gentlemen. Mr.  
9 Coburn, I believe you're first up.

10 MR. COBURN: Thank you so much, Your Honor.

11 THE COURT: Whenever you're ready.

12 CROSS EXAMINATION

13 BY MR. COBURN:

14 Q Mr. Montgomery, good afternoon, sir.

15 A Good afternoon.

16 Q In your direct examination by the government, you mentioned  
17 that sometime after the homicide of Ms. Spence that you  
18 described, you met Mr. Gardner in, I think you said the DOC, is  
19 that right?

20 A Yes.

21 Q And you had a conversation, which the government asked you  
22 about, which you told the jury about, right?

23 A Yes.

24 Q Now, when you talk about the DOC, that stands for the  
25 Department of Corrections, right, sir?

1 A Yes.

2 Q Is that in Jessup, Maryland?

3 A No.

4 Q Okay. That's somewhere else?

5 A In Baltimore.

6 Q In Baltimore. Right after the government asked you that  
7 series of questions about your conversation where you testified  
8 about what was your conversation with Mr. Gardner, the government  
9 then played what they referred to as the Stop Snitching II video  
10 or a portion of it, correct, sir?

11 A Right.

12 Q They played the part of the video in which there's an  
13 individual who you said you know, right?

14 A Right.

15 Q And what's that person's name again?

16 A Tall Vials.

17 Q Tall Vials. Now, is Mr. Tall Vials sitting in this  
18 courtroom anywhere?

19 A No.

20 Q You indicated that he's shown on the video. And we all saw  
21 him holding up a cell phone in which he's having a conversation  
22 with somebody who says they're in Supermax, is that correct, sir?

23 A Right.

24 Q You told the jury that you have no idea who that person is  
25 in Supermax who's talking through the cell phone on to the video,

1 is that correct?

2 A Right.

3 Q Okay. And you testified about that right after the  
4 government asked you about a conversation you've told us about  
5 with Mr. Gardner in which you said Mr. Gardner said that he  
6 thought that it was looking good, that he might be able to beat  
7 this, right, sir?

8 A Right.

9 Q And your interpretation of the Stop Snitching II video in  
10 which your name is explicitly mentioned is that this is a threat  
11 to your physical safety, is that correct, sir?

12 A Right.

13 Q And I believe the government asked you at the very beginning  
14 of your testimony, I guess it was yesterday, whether you were in  
15 the Federal Witness Protection Program, right, sir?

16 A Right.

17 Q And you told us that yes, you were?

18 A Right.

19 Q And that is a program that is administered by the U.S.  
20 Marshal Service in the United States, right, sir?

21 A Right.

22 Q For witnesses who are at risk, right?

23 A Right.

24 Q And there have been movies about it, right?

25 A Right.

1 Q I mean, this is a situation in which people change their  
2 names and move to different locations, right?

3 A Right.

4 Q Okay. Now, you have provided testimony about what you've  
5 told the jury is criminal conduct by several of the people in  
6 this room, right, sir?

7 A Right.

8 Q But they are not the only ones that you have cooperated  
9 against, are they?

10 A No.

11 Q Can you tell the ladies and gentlemen of the jury, those  
12 people sitting immediately to your right, Mr. Montgomery, how  
13 many times you spoke to either state or federal prosecutors as  
14 part of your cooperation that was called for by the plea  
15 agreement that Mr. Harding showed you?

16 A I don't know.

17 Q Okay. Well, let me just ask you if you remember the  
18 following. Is it correct that you gave a taped statement to  
19 Baltimore City Homicide on July 2nd, 2002?

20 A Yes.

21 Q That was the very day of your arrest, right, sir?

22 A Right.

23 Q And is it correct that you then gave another taped  
24 statement, which is referred to as the second taped statement, to  
25 Baltimore City Homicide on July 3rd, 2002, the next day, although



1 perhaps it's more technically the same day because it's at 12:32  
2 a.m., just after midnight, is that right?

3 A Right.

4 Q And is it correct that you then gave another statement  
5 referred to as the third taped statement to Baltimore City  
6 Homicide on July 3rd, 2002, this time after the sun came up, at  
7 11:08 a.m., is that right?

8 A I believe so.

9 Q Is it also correct, Mr. Montgomery, that you engaged in a  
10 series, I believe it would be five, consecutive proffer  
11 sessions -- you know what the word "proffer" means?

12 A No.

13 Q Okay. Well, this is not a quiz or anything like that. The  
14 only reason I ask is because during the course of your direct  
15 testimony the government showed you as an exhibit early in your  
16 testimony what they referred to as proffer letter. Do you  
17 remember that?

18 A Right.

19 Q Okay. So you had a series meetings with the U.S. Attorney's  
20 office, right?

21 A Right.

22 Q And the first one, you can just tell us if this is correct,  
23 was on August 13th, 2002, right?

24 A I don't know the dates.

25 Q Was there another one, then, on August 23rd, 2002 at 9:30

1 a.m.?

2 A I wouldn't remember the dates.

3 Q Okay. Well, how about, do you remember when, the same day,  
4 September 23rd, '02, at 10:45 a.m.?

5 A I one remember the dates.

6 Q How about September 26th, '02, at 11:10 a.m.?

7 A I wouldn't remember the dates.

8 Q Well, do you remember one three hours later, September 26th,  
9 '02, at 2:05 p.m.?

10 A No.

11 Q Do you recall giving a recorded statement -- do you remember  
12 an individual, Mr. Montgomery, by the name of Dean Stocksdales?

13 A Yes.

14 Q Does that name sound familiar?

15 A Yes.

16 Q Okay. Well, do you remember giving him and others a  
17 recorded statement on January 23rd -- and this was a detailed  
18 recorded statement relating to the Tonya Jones-Spence homicide --  
19 do you remember giving that on January 22nd, 2003?

20 A I remember giving a taped statement but not the date.

21 Q Okay. And that was in the U.S. Attorney's office you gave  
22 that, right, sir?

23 A Right.

24 Q All right. Do you remember testifying, then, even after  
25 that, before a federal grand jury on January 14th, 2004?

1 A I remember testifying in the grand jury, yes.

2 Q And do you recall giving testimony in a prior proceeding, a  
3 prior proceeding on September 29th, 2004 relating to the Tonya  
4 Jones-Spence homicide? Do you remember that?

5 A Yes.

6 Q All right. Now, during the course of this, this series of  
7 conversations that you had first with Baltimore City Homicide,  
8 then with the U.S. Attorney's office, plus the recorded statement  
9 with Dean Stocksdales that you told us about, tell me whether or  
10 not you provided information about what you said was criminal  
11 conduct by the following people. Okay?

12 Tyree Stewart. Did you say that he had engaged in  
13 criminal conduct?

14 A Yes.

15 Q I mean, you told law enforcement that it was Tyree Stewart  
16 that hired you to murder Terry Cheeks, right?

17 A Yes.

18 Q So that would be criminal conduct, correct?

19 A Right.

20 Q Do you remember telling law enforcement during the course of  
21 your cooperation that we've just talked about, about criminal  
22 conduct by someone by the name of Corey Smith?

23 A Right.

24 Q Is that correct?

25 A Yes.

1 Q Corey Smith was somebody who you described to law  
2 enforcement during your cooperation as a self-proclaimed  
3 gangster, is that right?

4 A I don't remember making that statement.

5 Q Are you telling us that you did not?

6 A I don't remember. I don't remember making it.

7 Q Okay. Well, then, let me just sharpen this a little bit so  
8 we have the record clear. Is it a fact that during the course of  
9 a proffer session with the U.S. Attorney's office on August 23rd,  
10 2002 at 10:45, starting at 10:45 a.m., you stated that Corey  
11 Smith is a self-proclaimed gangster?

12 A I don't remember making that statement.

13 Q So it's false, is that right?

14 A I'm not saying that.

15 Q You're just telling us you don't know one way or the other,  
16 is that right?

17 A Right.

18 Q Did you tell law enforcement about criminal conduct by Corey  
19 Smith?

20 A Yes.

21 Q Did you tell law enforcement that it was Corey Smith who was  
22 basically like the person in the middle? The intermediary who  
23 talked to you and made the arrangements for you to get paid  
24 \$10,000 for killing Terry Cheeks? Is that right?

25 A No.

1 Q Okay. Did you tell law enforcement that he was involved in  
2 any way in the murder of Terry Cheeks?

3 A Yes.

4 Q All right. So you described criminal conduct by him, too,  
5 right?

6 A Yes.

7 Q Now, I believe you mentioned, just kind of in passing,  
8 during the course of your direct examination where Mr. Harding  
9 was asking you questions, someone by the name of Dirty, right?

10 A Yes.

11 Q You know who Dirty is, right?

12 A Yes.

13 Q I think you told Mr. Harding that Dirty is a friend of  
14 yours, is that correct?

15 A Yes.

16 Q His real name is Davon Watson, right?

17 A Yes.

18 Q Did you tell law enforcement about criminal conduct that he  
19 had committed?

20 A Yes.

21 Q In fact, you told law enforcement that he had been involved  
22 in a murder, right?

23 A Yes.

24 Q Did you also tell law enforcement about criminal conduct,  
25 and I'm just going to ask you about a number of names here, by

1 someone --

2 MR. HARDING: Objection, Your Honor.

3 THE COURT: Overruled. Go ahead.

4 Q -- by someone that you knew or know as Dicky, criminal  
5 conduct by Dicky?

6 A Dicky?

7 Q Dicky.

8 A I don't know no Dicky.

9 Q You don't know no Dicky?

10 A No.

11 Q Is that your testimony?

12 A Yes.

13 Q Okay. How about someone by the name of Marvin? These are  
14 just nicknames that I'm just, I'm just, you know, you can tell us  
15 if you don't know who I'm talking about. Do you know someone by  
16 the name of Marvin from the streets?

17 A Yes.

18 Q Did you tell law enforcement about criminal conduct by  
19 Marvin?

20 A Yes.

21 Q Did you tell law enforcement about criminal conduct by the  
22 person that you've referred to and described for the ladies and  
23 gentlemen of the jury to your right there, someone by the name of  
24 Momma?

25 A Yes.

1 Q I mean, you told us just over the last couple of days that  
2 it was an arrangement you made with Momma about Momma showing you  
3 where Darius Spence lived so you could kill him, right?

4 A Yes.

5 Q So that's criminal conduct, right?

6 A Yes.

7 Q You also told law enforcement about criminal conduct by  
8 Aaron Holly, right?

9 A Yes.

10 Q That's the person whose nickname is E, correct?

11 A Yes.

12 Q Did you also tell law enforcement about criminal conduct by  
13 someone by the name of Kelly?

14 A Kelly?

15 Q Kelly. Does that sound familiar?

16 A No.

17 Q So your answer is no, is that correct?

18 A Right.

19 Q Did you also tell law enforcement about criminal conduct by  
20 someone by the name of Poe, P-O-E?

21 A Yes.

22 Q You did? You told law enforcement that Poe and, I'm going  
23 to just ask you, Kelly were involved in the murder of someone by  
24 the name of Apple, is that correct?

25 A No.

1 Q It's incorrect?

2 A Right.

3 Q Did you tell law enforcement about criminal --

4 THE COURT: I'm sorry. Is it incorrect that he told  
5 them or is it incorrect, that it's not truthful? Or more  
6 accurate?

7 THE WITNESS: I didn't tell them that.

8 BY MR. COBURN:

9 Q You didn't say a word about Kelly, is that right?

10 A No.

11 Q Is that correct?

12 A Right.

13 Q Okay. And you didn't say anything about Kelly or Poe being  
14 involved in the murder of someone by the name of Apple, is that  
15 right?

16 A No.

17 Q Is that right?

18 A Right.

19 Q Okay. Did you ever hear of somebody by the name of Rog,  
20 R-O-G?

21 A Yes.

22 Q Did you tell law enforcement about criminal conduct by him?

23 A Yes.

24 Q How about Halfie, someone who you know as Halfie. Did you  
25 tell law enforcement about criminal conduct by Halfie?



1 A Yes.

2 Q Do you know someone by the name of Angelo Clary, who's known  
3 as Pooh?

4 A Yes.

5 Q Did you tell law enforcement about criminal conduct by him?

6 A Yes.

7 Q How about Antoine Wingo? Does that name sound familiar?

8 A No.

9 Q Never heard of him?

10 A No.

11 Q So it's your testimony it, then, as you sit here, that you  
12 did not tell law enforcement about any criminal conduct by  
13 someone by the name of Antoine Wingo, right?

14 A No.

15 Q Is that correct?

16 A Right.

17 Q How about someone by the name of Mackie? Does that name  
18 sound familiar?

19 A Yes.

20 Q You told them about criminal conduct by him?

21 A Yes.

22 Q Dezzy?

23 A Yes.

24 Q Did you tell them about criminal conduct by Dezzy?

25 A Yes.

1 Q How about someone you know as Smith? Did you tell law  
2 enforcement about criminal conduct by Smith?

3 A I don't know no Smith.

4 Q You don't know any Smith?

5 A No.

6 Q So you did not, it's your testimony you did not tell law  
7 enforcement about criminal conduct by him, right?

8 A Right.

9 Q How about Smoky? Do you know that nickname?

10 A Yes.

11 Q Did you tell law enforcement about criminal conduct by him?

12 A Yes.

13 Q How about Stink? Do you know that name?

14 A Yes.

15 Q Did you talk to law enforcement about criminal conduct by  
16 Stink?

17 A Yes.

18 Q Do you know the name Sharif?

19 A Yes.

20 Q Did you talk to law enforcement about criminal conduct by  
21 him?

22 A Yes.

23 Q Do you know someone by the name of Pistol?

24 A Yes.

25 Q Did you talk to law enforcement about criminal conduct by

1 him?

2 A Yes.

3 Q How about Fruit?

4 A Yes.

5 Q Did you talk to law enforcement about criminal conduct by  
6 him?

7 A Yes.

8 Q Stokes? Do you know him?

9 A No.

10 Q Never heard of anyone by the name of Stokes, is that  
11 correct?

12 A Right.

13 Q How about Boopie? Does that name sound familiar?

14 A Yes.

15 Q Did you talk to law enforcement about criminal conduct by  
16 him?

17 A Yes.

18 Q How about Fatty Pooh? Does that sound familiar?

19 A Yes.

20 Q Did you talk to law enforcement about criminal conduct by  
21 him?

22 A Yes.

23 Q What about Duck?

24 A Yes.

25 Q Does that nickname sound familiar?

1 A Yes.

2 Q And did you talk to law enforcement about criminal conduct  
3 by him?

4 A Yes.

5 Q Rough House?

6 A Yes.

7 Q Criminal conduct by him?

8 A Yes.

9 Q Elkie?

10 A Yes.

11 Q Criminal conduct by him?

12 A Yes.

13 Q And just two more. Do you know someone by the name of  
14 Vernon Yellowday?

15 A No.

16 Q Never heard of him?

17 A No.

18 Q How about just Vernon? Ever heard of him?

19 A Yes.

20 Q Did you talk to law enforcement about criminal conduct by  
21 him?

22 A Yes.

23 Q Now let's talk about one last person, sir. Do you know  
24 someone by the name of Bunk?

25 A Yes.

1 Q Did you happen to talk to law enforcement, Mr. Montgomery,  
2 about criminal conduct by Bunk?

3 A Yes.

4 Q Did you also happen to mention to law enforcement that Bunk  
5 had tried to have you killed in jail?

6 A Yes.

7 Q You did?

8 A Yes.

9 Q Did you say anything about that on your direct examination?

10 A I don't know.

11 Q You told law enforcement that someone by the name of Mike J,  
12 who was working with Bunk, hired someone by the name of Real to  
13 kill you when you were incarcerated, right, sir?

14 A No.

15 Q That's wrong?

16 A Yes.

17 Q Okay. Was Mike J involved in any way?

18 A Yes.

19 Q Was Real involved in any way?

20 A No.

21 Q He was not?

22 A Right.

23 Q So there was no one by the name of Real who was supposed to  
24 be involved in this scheme by Bunk to kill you, right, sir?

25 A Right.

1 Q Okay. You, Mr. Montgomery, are a hit man, is that correct?

2 A You could say that, yes.

3 Q You know a detective by the name of John Giganti, right,  
4 sir?

5 A No.

6 Q Never met him?

7 A I probably did.

8 Q Okay. Do you know whether anyone by that name was present  
9 for any of this series of meetings that you had with law  
10 enforcement?

11 A He probably was.

12 Q Let me ask you a little bit about the murder of Terry  
13 Cheeks. You've already indicated that Tyree Stewart was involved  
14 in this, right, sir?

15 A Yes.

16 Q Now, is Tyree Stewart in the courtroom today?

17 A No.

18 Q Did Tyree Stewart work with a group of people?

19 A Yes.

20 Q Was one of those people Corey Smith?

21 A Yes.

22 Q Is Corey Smith in the courtroom today?

23 A No.

24 Q Pardon?

25 A No.

1 Q Tyree Stewart and Corey Smith were both involved in causing  
2 or participating in the events leading to the murder of Terry  
3 Cheeks, is that right?

4 A Yes.

5 Q Terry Cheeks had a nickname, right, sir?

6 A Yes.

7 Q What was that?

8 A T-Rock.

9 Q T-Rock. Did you tell Mr. Harding, I think you may have,  
10 during your direct examination, that the reason Terry Cheeks had  
11 to die was because he had been involved in the murder of somebody  
12 else a couple of weeks earlier, is that correct?

13 A Yes.

14 Q And this related in some way to Dirty, right, sir?

15 A Yes.

16 Q Okay. Now, Terry Cheeks or K-Rock, he was a friend of  
17 yours, is that correct?

18 A Yes.

19 Q He trusted you, is that right?

20 A Yes.

21 Q And so what happened, after you made this arrangement to get  
22 paid \$15,000 for his murder, was that you and he were standing on  
23 a street corner one day, is that correct?

24 A Yes.

25 Q And he peeked around the corner, is that right, sir?

1 A Yes.

2 Q And then you dropped back a little bit. Right, Mr.  
3 Montgomery?

4 A Yes.

5 Q And when you dropped back, you pulled out a 9 millimeter  
6 semi-automatic handgun, is that correct?

7 A Yes.

8 Q You had it in your dip, right, sir?

9 A Yes. No.

10 Q No?

11 A I had it in my back pocket.

12 Q Okay. You pulled it out of your back pocket while Mr.  
13 Cheeks, your friend, was peering around the corner. Right, sir?

14 A Yes.

15 Q And you pointed that handgun at the back of his head, is  
16 that correct?

17 A Yes.

18 Q And you pulled the trigger, right?

19 A Yes.

20 Q So you sent a bullet through your friend, Mr. Cheeks's,  
21 head, through the back of his head. I believe, I don't know if  
22 you noticed this at the time, but you can tell us, the bullet  
23 exited through his left eye, is that correct? Did you happen to  
24 notice that after he fell to the ground after you shot him?

25 A Yes.



1 Q But despite the fact that you had just shot your friend,  
2 Terry Cheeks, in the back of the head and he fell to the ground,  
3 you had the presence of mind before running away to take the gun  
4 that he was holding out of his hand first, right, sir?

5 A I tried to.

6 Q You didn't succeed?

7 A No.

8 Q So you left it there, is that your testimony?

9 A No.

10 Q It's not your testimony?

11 A No.

12 Q Did you take it with you?

13 A I didn't, no.

14 Q Someone you were with took it with them?

15 A Yes.

16 Q Okay. You pulled it out of his hand, is that correct?

17 A I tried to.

18 Q Now, have you heard of the Randallstown/Park Heights  
19 organization?

20 A No.

21 Q Never heard of it?

22 A No.

23 Q Did that murder of Terry Cheeks that you committed with your  
24 own hands, sir, have anything to do with something called the  
25 Randallstown/Park Heights organization?

1 A No.

2 Q It is correct, is it not, and I believe you told Mr. Harding  
3 this, that prior to your doing this murder for Tyree Stewart, you  
4 were beefing with Tyree Stewart, right?

5 A Yes.

6 Q That means that you had a dispute with him, is that correct?

7 A Right.

8 Q Okay. And it's correct, is it not, that Tyree Stewart and  
9 the people around him nonetheless, despite the fact you committed  
10 this murder, put out a contract on you, right, sir?

11 A Right.

12 Q And that contract was for a lot bigger amount of money than  
13 the 10,000 you were paid for murdering Terry Cheeks or the 15,000  
14 you say you were owed for it, correct?

15 A Right.

16 Q It was for \$50,000 for your murder, right, sir?

17 A Right.

18 Q And I think you've already told us that Mr. Cheeks isn't in  
19 this court -- I'm sorry -- Mr. Stewart isn't in this courtroom,  
20 is he?

21 A No.

22 Q Okay. Now, tell me whether this is correct. Is it correct  
23 that Tyree Stewart and the people around you wanted you dead so  
24 badly because you terrorized their stripes, they can't make no  
25 money, and you want their money. They ain't got nobody that can

1 handle you right now. They're just scared because they know what  
2 you are capable of doing when you want to do. Certain people  
3 you've got get them. That's why all of them --

4 MR. HARDING: Objection.

5 Q -- are scared. Is that right?

6 THE COURT: The objection is sustained.

7 Q I believe you told Mr. Harding, in response to one of his  
8 questions, that you use a lot of aliases, correct?

9 A Yes.

10 Q One of them was your brother's name. Is that right?

11 A Right.

12 Q Michael Rowe, R-O-W-E?

13 A Right.

14 Q In fact, that was the name that you actually went through,  
15 when you pled guilty to the murder of Terry Cheeks, you actually  
16 went through the whole plea proceeding using that name, is that  
17 right?

18 A No.

19 Q Okay. Is it correct that you have lied to the police every  
20 single time you have been arrested? Is that accurate?

21 A Yes.

22 Q And sometimes they appear to believe you, didn't they?

23 A Yes.

24 Q It's correct, is it not, Mr. Montgomery, that the intention  
25 or the attempt to rob and murder Darius Spence was your idea,

1 right, sir?

2 A Right.

3 Q The reason you came up with the idea of robbing and  
4 murdering Darius Spence was because it was worth some money, is  
5 that right?

6 A Right.

7 Q You have told us, you have testified in response to  
8 questions from Mr. Harding that -- let me have the Court's  
9 indulgence, if I may, just for a moment.

10 THE COURT: Yes.

11 Q You've told us about what you have testified under oath were  
12 Goo, that's Shawn Gardner's, reasons for becoming involved in  
13 this scheme, is that correct, sir?

14 A Yes.

15 Q And you have told this jury under oath that his reason for  
16 becoming involved was because he needed money to pay for a lawyer  
17 for Shelly Wayne Martin, is that right?

18 A Right.

19 Q And you've told this jury that that's what he told you at  
20 the time, right, sir?

21 A Right.

22 Q Okay. Now, in any of the prior times that you have talked  
23 to law enforcement or testified, any of those times, any of those  
24 proffer sessions, any of those taped interviews, the recorded  
25 statement with Dean Stocksdale, the testimony before the grand

1 jury, or the testimony in the prior proceeding, any of those  
2 times when you referred to the Tonya Jones-Spence homicide did  
3 you ever, ever before say that, that Mr. Gardner had said that he  
4 needed money for Shelly Wayne Martin's lawyer? Ever once say it?

5 A Yes.

6 Q Which one?

7 A I don't know.

8 Q But you're sure you said it in one of them, right, sir?

9 A Right.

10 Q Did you say it in more than one?

11 A Probably.

12 Q Probably. At least one. That is your testimony, right,  
13 sir?

14 A Yes.

15 Q Okay. During the course of your conversations with the  
16 prosecutors and as you prepared for your testimony yesterday and  
17 today, have any of the prosecutors in this case talked to you  
18 about what this case is about? In other words, what the  
19 allegations are, what's, you know, in the indictment in this  
20 case. Have they talked to you about that at all?

21 A No.

22 Q That's your testimony, they never told you anything about  
23 that, is that right?

24 A No.

25 Q Okay. Now, you testified yesterday that you and the

1 individuals in this courtroom who you referred to, including Mr.  
2 Gardner, you said that you were a family. You used the word  
3 "family", is that right, sir?

4 A Yes.

5 Q In any of your prior statements, those ones we were just  
6 talking about, any of them, did you ever before today use that  
7 word to describe your relationship with these people?

8 A I believe so, yes.

9 Q Which one?

10 A I don't know.

11 Q But you're sure it's one of them?

12 A I believe so, yes.

13 Q How sure are you? Are you certain?

14 A Yes.

15 Q Okay. I'm referring now to what I called your taped  
16 statement. This occurred on January 22nd, 2003, the conversation  
17 with Mr. Stocksdales that we just referred to. Okay? Page 10 of  
18 the transcript. Actually, I should tell Your Honor there are a  
19 couple of different transcripts of this, one of which we have,  
20 the other we don't. I'm hoping the government has the same one  
21 we're looking at. It's not the official court reporter  
22 transcript.

23 Page 10, right around the middle of the page. And  
24 you've told us, and this is just a little bit of repetition, I  
25 apologize, you've told us you have previously referred to your

1 relationship Mr. Gardner and others in this courtroom as a  
2 family. Right, sir?

3 A Yes.

4 Q Well, then, tell us, Mr. Montgomery, whether on that date I  
5 just referred to, January 22nd, 2003, you were asked the  
6 following questions and gave the following answers? And tell us  
7 whether the voice that you're hearing on this tape I'm about to  
8 play for you, whether that's your voice. Okay, sir?

9 A Yes.

10 Q Apologize, Your Honor. We have a cassette tape so we've got  
11 to use this little --

12 THE COURT: Old style.

13 MR. COBURN: Exactly. Old style.

14 (Tape playing.)

15 Q Was that your voice?

16 A That sounds like me, yes.

17 Q Was that a part of the recorded statement that you gave on  
18 January 22nd, 2003?

19 A I believe so.

20 Q So you stated, when you gave that statement, that your  
21 relationship with Mr. Gardner ain't no serious relationship to  
22 have to honor each other, is that correct?

23 A Correct.

24 Q And that's true, right, sir?

25 A Right.

1 Q And you said you used to associate with him on a regular  
2 basis but it wasn't nothing like you met every day or he called  
3 you when he got in trouble, right?

4 A Right.

5 Q That was true, right, sir?

6 A Right.

7 Q The relationship wasn't like what you and Dirty had, right?

8 A No.

9 Q Is that right?

10 A No.

11 Q It's not right?

12 A It wasn't like what me and Dirty had.

13 Q Okay. You and Dirty were a lot closer, right, sir?

14 A No.

15 Q You weren't closer; is that your testimony?

16 A Right.

17 Q Okay. The murder of Mr. Cheeks that we just talked about,  
18 that related to Dirty, right, sir?

19 A Right.

20 Q Part of the reason you felt you had to do it was because  
21 dirty was in danger, right, sir?

22 A Yes.

23 Q All right. Now, you have told this jury that Mr. Gardner  
24 was, told you that he needed to be part of this plan, the robbery  
25 and murder of Darius Spence, because he needed money for Shelly



1 Wayne Martin's lawyer, right, sir?

2 A Right.

3 Q So tell us, then, sir, whether back on January 22nd, 2003,  
4 you were asked the following questions about that and gave the  
5 following answers? It's the same page, Page 10 of the  
6 transcript, just the very next section.

7 (Tape playing.)

8 Q Was that your voice?

9 A Yes.

10 Q Back on January 22nd, 2003?

11 A I believe so.

12 Q So at that time you were asked the question: Um, was there  
13 a particular reason that Gardner was or was part of this plan,  
14 right?

15 A Right.

16 Q And you responded that he had taken a nice fall, right?

17 A Right.

18 Q That he lost a couple of thousand, right, sir?

19 A Right.

20 Q And where in that answer, then, did you tell the person who  
21 was interviewing you about the need to pay Shelly Wayne Martin's  
22 lawyer?

23 A In that interview? I guess nowhere in there.

24 Q Okay. You were also asked, just a few lines down in the  
25 same interview, about your relationship with Aaron Holly. That's

1 a person that you know by the nickname of E, is that correct?

2 A Yes.

3 Q And now I'm on Page 11 of the same transcript. And you  
4 stated, he cool, right?

5 A Probably.

6 Q Okay. And then you were asked, and when you say, again, he  
7 cool, what do you mean by that? We can play this. Just requires  
8 us to go a little farther on the tape. But I'll just ask you.

9 You said, did you not: Ain't no, I don't know, I  
10 don't, I don't trust him like that. I use him for certain  
11 things. Did you say that?

12 A Probably so, yes.

13 Q So you didn't trust him like that, right, sir?

14 A Right.

15 Q Is it correct, Mr. Montgomery, that Goo, that's my client,  
16 Shawn Gardner, and E had no connection with Darius Spence or  
17 Tonya Spence, none, before you got them involved in this plan, is  
18 that correct?

19 A Right.

20 Q Now, you testified, again, this is yesterday when Mr.  
21 Harding was asking you questions about someone by the name of  
22 Goose, is that correct?

23 A Yes.

24 Q And you testified about there being some planning before,  
25 the planning about the murder and robbery of Darius Spence, that

1       there was some planning about a robbery of Goose, is that right?

2       A       Yes.

3       Q       And you told us, did you not, that the people, this is  
4       yesterday, when you were on the witness stand here in this  
5       courtroom, that people involved in planning the robbery of Goose  
6       were Mr. Gardner and Mr. Martin and others, is that right?

7       A       I don't remember.

8       Q       Pardon?

9       A       I don't remember.

10      Q       You don't remember?

11      A       Right.

12      Q       Is it your testimony that Mr. Gardner was involved in the  
13      planning of the robbery of Goose?

14      A       Yes.

15      Q       He was?

16      A       Yes.

17      Q       You're sure?

18      A       Yes.

19      Q       Okay. In any of your prior statements relating to the Tonya  
20      Jones-Spence homicide, any of them, did you say -- strike that.  
21      Did you say anything about Mr. Gardner being involved in the  
22      planning of the robbery of Goose, ever, before today?

23      A       I don't know.

24      Q       Let's take a look now, if we could, at your plea agreement,  
25      the one that you executed in connection with your killing of

1 Terry Cheeks. This is a document that was shown to you by the  
2 government. And if I could impose on Mr. Harding for the  
3 government's exhibits, that would be much appreciated. P-3, is  
4 it? If not, I have another copy of it right here, if it would be  
5 easier. Okay. That's okay. I've got it right here.

6 Mr. Montgomery, do you remember being shown a copy of  
7 this document during the course of Mr. Harding's questioning of  
8 you?

9 A Yes.

10 Q All right. At the title, at the top, it says State of  
11 Maryland versus William Montgomery, AKA Michael Rowe, right, sir?

12 A Yes.

13 Q Okay. Then if we move down the page it says, this is right  
14 on the first page, under the terms of this agreement are as  
15 follows. It says, does it not, the defendant agrees to cooperate  
16 with the State on the following terms and conditions, right?

17 A Right.

18 Q It says, and this is just the first sentence there right  
19 underneath, the defendant represents that he has fully and  
20 truthfully responded to all questions put to him by federal,  
21 state, and local law enforcement authorities during all prior  
22 proffer sessions. Right?

23 A Yes.

24 Q Now, this document has your signature on it, I believe  
25 you've already told us, right, sir? That's your signature at the

1 back?

2 A Yes.

3 Q Just to review a couple of the conditions, the things that  
4 you promised when you signed this agreement and that the  
5 government promised. Well, it looks like these pages aren't  
6 numbered. But this, I think, is Page Three of the agreement. At  
7 the very top. Says, does it not, the United States Attorney's  
8 Office for the District of Maryland has represented that the  
9 defendant will not be prosecuted by the federal government for  
10 his participation in the homicide of Terry Cheeks. See where it  
11 says that at the very top? Did I read that right?

12 A Right.

13 Q Now, it's your understanding that you could have been  
14 prosecuted in Federal Court for the murder of Terry Cheeks that  
15 you admit you committed, right, sir?

16 A Yes.

17 Q But it was one of the conditions of this agreement, in  
18 exchange for your willingness to cooperate, that the U.S.  
19 Attorney's office, the federal prosecutors in this jurisdiction,  
20 agreed that you wouldn't be prosecuted at all for the murder of  
21 that person, right, sir?

22 A At all?

23 Q Well, that's what it says, right? That they're not going to  
24 prosecute you?

25 A Right.

1 Q By the federal government for its participation in the  
2 homicide of Terry Cheeks, right, sir?

3 A Right.

4 Q Now, you've told us, have you not, that you were also, I  
5 mean, deeply involved in what ended up being the murder of Tonya  
6 Jones-Spence, right, sir?

7 A Yes.

8 Q You drove the car -- I mean, aside from this all being your  
9 idea, you drove the car to the scene, right?

10 A No.

11 Q Okay. Well, then, after the car got to the scene, you were  
12 driving it, right, sir?

13 A Right.

14 Q You waited in the car while the two individuals you said  
15 committed this homicide, or committed this attempted robbery and  
16 the other events you described were in the apartment building,  
17 right, sir?

18 A Right.

19 Q It was your intention to, you've told us, to pick them up  
20 afterwards, right, sir?

21 A Right.

22 Q You were talking to them, you've told us, on a walkie-talkie  
23 the whole time, right, sir?

24 A Right.

25 Q But you have not been prosecuted at all for this murder,

1 have you, or attempted robbery?

2 A No.

3 Q And it is your expectation, is it not, that as part of your  
4 cooperation you will never be prosecuted for your role in the  
5 death of that young woman, isn't that right?

6 A Right.

7 Q Let's continue to go on down this agreement.

8 Subparagraph C there starts with: At the defendant's  
9 sentencing, the State will make a recommendation. Do you see  
10 that?

11 A Yes.

12 Q Then the next sentence says: If the defendant completes all  
13 of the terms and conditions set forth in this agreement to the  
14 satisfaction of the State, the State will recommend that the  
15 defendant receive a maximum sentence of life imprisonment -- and  
16 here we get into some legal language, which maybe you can  
17 interpret for us -- with all but a cap of 40 years suspended,  
18 followed by 5 years supervised probation upon his release. You  
19 understand exactly what that means, right, Mr. Montgomery?

20 A Right.

21 Q Now, you understood, did you not, sir, that you could have  
22 been facing the death penalty for this murder, right?

23 A Right.

24 Q Even if the prosecutors hadn't sought the death penalty, you  
25 certainly could have been facing life imprisonment without

1 parole, so you're in jail, in prison, I should say, for the rest  
2 of your natural life, correct?

3 A Right.

4 Q But instead what's being agreed to here is that the State  
5 will recommend that you receive, and again, it says a maximum  
6 sentence of life imprisonment with all but a cap of 40 years  
7 suspended, right?

8 A Right.

9 Q So that means, does it not, Mr. Montgomery, that assuming  
10 the State's recommendation is accepted by the Court, you cannot  
11 receive more than 40 years for that murder, right, sir?

12 A Right.

13 Q But you could receive less, right, sir?

14 A Right.

15 Q You're hoping you will, right, Mr. Montgomery?

16 A Right.

17 Q And if I understand correctly, sir, you have not been  
18 sentenced yet, have you?

19 A No.

20 Q But this murder occurred a long time ago, didn't it?

21 A Right.

22 Q Back in '02?

23 A Right.

24 Q And today it's, right now it's 2008. So that's about a  
25 little more than six years later, right, sir?



1 A Right.

2 Q And is it your understanding, then, that the Court is  
3 basically kind of waiting, has the matter stayed pending your  
4 cooperation?

5 A Right.

6 Q So that prosecutors then can make kind of a full,  
7 comprehensive representation about how good your cooperation was?

8 A Right.

9 Q Then it says, does it not, Subparagraph D: The State will  
10 recommend that the sentence imposed for Indictment Number 10311,  
11 and it's got a bunch of numbers, be made to run concurrently with  
12 any sentence the defendant may receive for violation of probation  
13 under another case number. See where it says that?

14 A Yes.

15 Q Now, do you remember Mr. Harding, when he was asking you  
16 questions yesterday and today, I believe he established that when  
17 you got arrested after the Cheeks homicide, what you got arrested  
18 for was a violation of probation?

19 A Yes.

20 Q And so the way probation works, you've been on probation a  
21 lot, right, Mr. Montgomery?

22 A Yes.

23 Q I mean, how many times have you had a judge sentence you to  
24 a period of probation?

25 MR. HARDING: Objection.

1 THE COURT: If you know.

2 A I don't.

3 Q When you get sentenced to probation, typically, the judge  
4 essentially is asking you for a promise that you'll engage in  
5 lawful conduct and stay out of trouble, and in exchange, during  
6 your period of probation, you won't be incarcerated, right, sir?

7 A Right.

8 Q Have you ever actually followed through on a promise like  
9 that that you made to a judge?

10 A No.

11 Q So each time you made that promise to a judge, you were  
12 lying, right?

13 A Right.

14 Q This paragraph here, this Subparagraph D, what this is  
15 saying, and the key word is right over here, concurrently, you  
16 know exactly what that word means, right, Mr. Montgomery?

17 A Right.

18 Q Concurrent means that the two sentences are going to run  
19 together, right?

20 A Yes.

21 Q So in other words, when you serve a day on one, it counts as  
22 a day on the other, right?

23 A Right.

24 Q So when the two sentences run concurrently, you're really  
25 only serving one of them, the longer one, right?

1 A Right.

2 Q The other one doesn't really count because those days are  
3 elapsing just like, at the same time the sentence, the days on  
4 the longer one are going, right, sir?

5 A It don't count to me, right.

6 Q Okay. And so part of the promise that's being made to you  
7 in exchange for your cooperation is that basically you're not  
8 doing any additional time on this violation of probation, right?

9 A Right.

10 Q And that charge, by the way, that you were on probation for,  
11 was that a gun charge?

12 A Right.

13 Q Then, and I believe Mr. Harding asked you about this,  
14 Subparagraph E says that what you say when you cooperate can't be  
15 used against you in any proceeding, right?

16 A Right.

17 Q And then, in Paragraph Four, moving on down this page, it  
18 says, does it not, it is understood that should the defendant  
19 commit any further crimes or should it be determined that he has  
20 knowingly withheld information, given false, incomplete or  
21 misleading testimony or information, or should he otherwise fail  
22 in any way to fulfill completely each and every one of his  
23 obligations under this agreement, then the State will be  
24 completely released from any obligations under this agreement.  
25 Did I read that right?

1 A Right.

2 Q And then it says, in such event, a series of bad things will  
3 happen, right?

4 A Right.

5 Q The State may recommend any sentence, the defendant shall be  
6 subject to prosecution by state or federal authorities for  
7 anything about which they have knowledge, right, sir?

8 A Right.

9 Q And it says, in any such prosecution this office may use as  
10 evidence in any criminal proceeding all statements made by you to  
11 the office or other designated law enforcement agents, is that  
12 correct?

13 A Right.

14 Q Okay. Now, there's just one other paragraph here that I  
15 wanted to direct your attention to, Mr. Montgomery. And just so  
16 we're clear about this. This agreement was executed, in other  
17 word, you signed it on May 13th, 2003, is that right, sir?

18 A Yes.

19 Q Paragraph Six says, does it not, and this is a condition,  
20 it's a provision of this agreement, is it not, the defendant  
21 shall not be permitted to withdraw a guilty plea entered pursuant  
22 to this agreement under any circumstances. Does it say that?

23 A Right.

24 Q Marking an item, Your Honor, as, I think we are up to  
25 Defendant Gardner's Exhibit Number Four. Strike that, Your

1 Honor. It should be Number Three. And before I put this on the  
2 presenter, Your Honor, I'm going to show it to Mr. Harding.

3 THE COURT: All right.

4 Q Marked the wrong one. I'm sorry.

5 MR. COBURN: Just so the government can note an  
6 objection if they seek to, Your Honor, before I put it on the  
7 presenter.

8 (Pause in proceedings.)

9 MR. COBURN: Also mark, just to save a little time,  
10 Your Honor, mark another item as Gardner Exhibit Number Four,  
11 which I'll show to Mr. Harding as well.

12 (Pause in proceedings.)

13 MR. COBURN: Your Honor, there does seem to be an  
14 objection to it. I don't know if Your Honor wants to have a side  
15 bar on this.

16 THE COURT: Can you just hand it to the clerk, please,  
17 the exhibits?

18 MR. COBURN: Absolutely. I'll hand both of them to the  
19 clerk, Your Honor.

20 THE COURT: Is there an objection to both?

21 MR. HARDING: I don't object to Mr. Coburn asking him  
22 about the document.

23 THE COURT: You want to put them in, Mr. Coburn?

24 MR. COBURN: If Your Honor would allow me to do so.

25 THE COURT: All right. Let me see them, please.

1 MR. COBURN: The first page on the first one, Your  
2 Honor, I don't need. It's really the remainder of it.

3 MR. HARDING: Judge, if Mr. Coburn's willing to include  
4 the first page, I'll withdraw the objection.

5 MR. COBURN: I'll include the first page.

6 THE COURT: Okay. So they're both in? All right.  
7 Gardner Three and Four are admitted.

8 MR. COBURN: Thank you, Your Honor. Other counsel are  
9 looking at it right now, Your Honor.

10 THE COURT: All right.

11 (Pause in proceedings.)

12 MR. LAWLOR: We have no objection, Your Honor.

13 MR. MARTIN: No objection.

14 MR. CROWE: No objection.

15 BY MR. COBURN:

16 Q Putting Gardner Three, then, on the DOAR presenter so that  
17 the jury can see it. Tell me whether you recognize this letter,  
18 whether you've ever seen that before.

19 A No, I haven't seen this letter.

20 Q First time?

21 A Yes.

22 Q Okay. Let me direct your attention just to one part of  
23 this. Do you see where it says at the bottom of the second  
24 paragraph, obviously, these discussions were private and are  
25 covered under attorney/client privilege?

1 A Yes.

2 Q And what's being referred to there are discussions involving  
3 a number of people, including your lawyers and the prosecutor,  
4 right?

5 A I believe so.

6 Q Do you believe that all those people, you have some kind of  
7 an attorney/client privilege with all those people?

8 A Not all.

9 Q Okay. Turning to the second page, tell us if you recognize  
10 this. This is a legal document, correct?

11 A Right.

12 Q And the title of it is Motion to Withdraw Guilty Plea,  
13 right?

14 A Right.

15 Q And it's in your case, right?

16 A Right.

17 Q See where it says, on April 7th, 2004, your lawyer received  
18 a telephone message from you saying that you wanted to withdraw  
19 your guilty plea?

20 A Yes.

21 Q And then this is the motion that your lawyer filed seeking  
22 to withdraw your guilty plea, right?

23 A Right.

24 Q And the motion got ruled on, right, sir?

25 A Yes.

1 Q Referring now to Gardner Exhibit Four. This is an order  
2 from the judge saying that your motion seeking leave to withdraw  
3 your guilty plea with respect to the murder of Terry Cheeks is  
4 denied, right?

5 A Right.

6 Q So when you filed that motion, you violated your plea  
7 agreement, right?

8 A I don't think so.

9 Q Do you remember the language in the plea agreement we looked  
10 at just a second ago saying the defendant shall not be permitted  
11 to withdraw guilty plea entered pursuant to this agreement under  
12 any circumstances?

13 A Yes.

14 Q So you violated it, correct?

15 A I guess I did.

16 Q So then given that you violated your cooperation plea  
17 agreement, I'm assuming that the government did all these things,  
18 that they said they were going to do, right? Because it says  
19 should you violate it, then the State's released from its  
20 obligations, going to recommend any sentence, you'll be subject  
21 to prosecution for any criminal violation, and the other language  
22 we looked at. That happened, right? Did any of that happen?

23 A No.

24 Q None of that happened, did it?

25 A No.



1 Q Let's look now at another document that the prosecution  
2 showed you.

3 THE COURT: Roughly ten more minutes, Mr. Coburn,  
4 before we break?

5 MR. COBURN: Absolutely. Any time that's convenient  
6 for the Court is good for me, Your Honor.

7 THE COURT: Five minutes or so.

8 BY MR. COBURN:

9 Q Perfect. This was marked by the government as Government's  
10 Exhibit P-2. Recognize that?

11 A Yes.

12 Q Do you remember Mr. Sakellaris, the government asked you  
13 about him?

14 A Yes.

15 Q He was your lawyer, one of your two lawyers, right?

16 A Right.

17 Q The other one was Joan Fraser, you told us?

18 A Right.

19 Q So this document is your plea agreement in your federal case  
20 that ran, that was around the same time as the other plea  
21 agreement that we looked at, right, sir?

22 A Right.

23 Q Let me show you a page of this agreement which I'm not sure  
24 the government asked you about. You can tell us. I'm referring  
25 to, actually starts at the very bottom of Page Six of the plea

1 letter and goes over to Page Seven. See where it says the title,  
2 Obligations of the United States Attorney's Office?

3 A Yes.

4 Q And the first one is, at the time of your sentencing on your  
5 federal charge -- and that's a gun charge, right?

6 A Yes.

7 Q That's a different gun charge, another gun charge from the  
8 one for which you were previously on probation, right, sir?

9 A Right.

10 Q It says at the time of sentencing this office will move to  
11 dismiss all remaining counts of the indictment pending against  
12 the defendant other than the count to which he has agreed to  
13 plead guilty. Right?

14 A Right.

15 Q And it says they're going to bring all relevant information  
16 to the Court's attention, right?

17 A Right.

18 Q And then it says, does it not, at the time of sentencing if  
19 the defendant has fully complied with all of his obligations  
20 under his plea agreement, with the Office of the State's Attorney  
21 for Baltimore City dated May 13th, 2003, which is incorporated by  
22 reference herein -- means it's made part of this document, right,  
23 sir?

24 A Right.

25 Q This office will recommend that any sentence imposed in this

1 matter be ordered to run concurrently with the sentence imposed  
2 in State of Maryland versus William Montgomery, AKA Michael Rowe,  
3 right?

4 A Right.

5 Q Now, there's that word "concurrently" again. If I  
6 understand correctly, this gun charge is the 9 millimeter, right?

7 A Right.

8 Q Is it the same 9 millimeter that you used to put a bullet  
9 into the back of Mr. Cheeks's head?

10 A No.

11 Q A different one?

12 A Right.

13 Q So you have used a couple of them during that period, right,  
14 sir?

15 A Yes.

16 Q And so what the prosecutor is saying here is that the  
17 sentence that you get for your federal gun charge is going to run  
18 concurrently with any sentence that you get for the murder of Mr.  
19 Cheeks, right?

20 A Right.

21 Q So you're not going to have to do any extra time on the  
22 federal charge at all, right, sir?

23 A Right.

24 Q Your Honor, with the Court's permission, this would be a  
25 great time to break.

1 THE COURT: All right. Thank you, Mr. Coburn. Mr.  
2 Montgomery is excused.

3 Mr. Montgomery will be back with us on Tuesday, ladies  
4 and gentlemen.

5 So ladies and gentlemen, that will conclude our court  
6 day and our court week. Let me take just a couple of minutes to  
7 review things with you.

8 I'm sure you're not counting, but this is actually the  
9 tenth day of evidence, it's the twelfth day that we've actually  
10 been in session. Of course, several of those days, like today,  
11 have been not full days. I am assured by the government that,  
12 despite the delays and late starts on several occasions which  
13 were necessitated, I assure you, by the need for the Court to  
14 confer with counsel on certain legal matters outside of your  
15 presence, has absolutely nothing to do with anybody being late or  
16 not attentive. I assure you everybody's been very attentive.

17 And we've tried to plan the trial as best we could.  
18 But as I've told you several times, a trial is not a Broadway  
19 play or a TV script where everything goes exactly as we hope. We  
20 have to deal with matters as they come up. And I appreciate your  
21 understanding and your patience as we deal with issues as they  
22 come up.

23 So this is the tenth day of evidence. I'm assured by  
24 the government that we are more than halfway through the  
25 government's presentation. So we're really making, I think, good

1 time.

2 Let me project for you very quickly what we expect in  
3 the next several weeks. Monday, of course, is a holiday,  
4 Columbus day. I used to work for a judge who would bring people  
5 in to work even on federal holidays, but I'm not that kind of  
6 judge. But we do work hard.

7 So we'll resume on Tuesday, the 14th. And we'll be in  
8 session Tuesday, the 14th, Wednesday the 15th, and Thursday, the  
9 16th, next week. So we hope to have pretty close to full days,  
10 three days, next week.

11 And then we're off for a week, and you'll be off to do  
12 your own business, to go to work, take care of your personal  
13 matters the week of October 20th. So we won't be in session at  
14 all during that week.

15 Then we come back on the 27th of October, two weeks  
16 from Monday, and we will have three days that week, the 27th, the  
17 28th, and the 29th, which I expect will be full days.

18 And then the following week we'll be in session all day  
19 on Monday, the 3rd of November. The 4th, of course, is Election  
20 Day so we'll start a little bit late to give those of you who  
21 wish to vote early in the morning a chance to do so and we'll  
22 break a little bit early for those of you who want to vote later  
23 in the day.

24 Then we'll be in session on November 5th, 6th, and 7th.  
25 Now, the 7th of November will be the first Friday that we'll be

1 in session. And what I anticipate is that we'll probably be in  
2 session until about 1 or 1:30 that day. We won't have a full day  
3 on Friday, the 7th.

4 That could very easily bring us very, very near the  
5 very end of the evidentiary portion of the trial. I'm not making  
6 a prediction now. But my sense is that with an additional seven  
7 or eight days or nine or ten days, we could very easily be at the  
8 end of the evidentiary portion of the trial.

9 Now, as I've told you, as I will instruct you, in a  
10 criminal case no defendant ever has any burden, is not required  
11 to produce any evidence, but is of course entitled to do so if he  
12 or she chooses. So whether the defendants in this case choose to  
13 call any witnesses or put on any evidence is a question that  
14 their attorneys and they will decide at the appropriate time and  
15 we'll abide their decisions.

16 But right now, it appears very likely that sometime  
17 around the second or maybe the third week of November, quite  
18 possibly the second week of November, you may begin your  
19 deliberations.

20 Now, as I've said to you before, there is no way for  
21 anybody ever to predict how deliberations will go, how long it  
22 might take. What's important is that each of you who is  
23 committed to deliberate fairly and impartially do so.

24 As you can probably surmise, my instructions in this  
25 case at the very end are going to be quite long. And indeed, I

1 might say now, not to hold us up, but you've already, I think,  
2 gotten a sense that several of the crimes in this case charged in  
3 the indictment are rather complex. And indeed, we use the term  
4 sometimes compound-complex crimes. They involve a number of  
5 elements that you the jury will have to consider in light of the  
6 evidence. And indeed in this case, the state law becomes a part  
7 of federal law in this case. And again, I will instruct you on  
8 all of this very carefully.

9 And I assure that the jurors who deliberate a verdict  
10 in this case will have, each one will have his or her own copy of  
11 my instructions that you will be able to take into the jury room,  
12 together with the exhibits, and look at and refer to as much as  
13 you need to to try to understand them. And of course, I can say  
14 this now, even during your deliberations, while you're not  
15 permitted to ask questions during the trial, should you have any  
16 questions during your deliberations about any matter, including  
17 matters related to my instructions, I am available, we are  
18 available to answer any questions that you may have during your  
19 deliberations.

20 What I can assure you of is that absolutely no one will  
21 be inconvenienced in terms of any plans you may have made. And  
22 we will not be in session on any days that I have not included in  
23 that letter that I gave you the first, the first week of trial.  
24 So you can plan your life around the days that you've been told  
25 we'll be in session.

1 Right now, frankly, it appears that the case won't go  
2 into December, after Thanksgiving, but there's still that  
3 possibility. But right now it does not appear to me that the  
4 case is going to go into Thanksgiving week. But we will not be  
5 in session on any day that is not listed in that letter that I  
6 gave you the first day.

7 With that, I will wish you goodbye for the week.  
8 Remember, no session on Monday, federal holiday. And do enjoy  
9 your weekend.

10 Let me emphasize, as you've grown accustomed to me  
11 having emphasized to you, conduct no investigation whatsoever,  
12 don't go online, don't look up any words, don't visit any  
13 locations. Do not discuss the case with family and friends.  
14 Avoid any media attention about the case. And do not discuss the  
15 case among yourselves.

16 Please leave your note pads on your chairs and have a  
17 pleasant weekend. We'll see you Tuesday morning, 9:30, to begin  
18 at that time.

19 Thank you, ladies and gentlemen. You are excused.

20 (Jury exits at 2:40 p.m.)

21 THE COURT: Mr. Harding, you and Mr. Hanlon will see to  
22 it that you get the lineup of witnesses to counsel as promptly as  
23 possible before end of the day tomorrow.

24 MR. HARDING: Yes, Your Honor.

25 THE COURT: Ms. Rhodes?



1 MS. RHODES: Yes, Your Honor, I have a scheduling  
2 request.

3 THE COURT: Please be seated, counsel.

4 MS. RHODES: I have an out-of-town witness coming and I  
5 would like to be able to schedule him for the 29th of October.  
6 Initially, we thought we would be beginning our witnesses the  
7 27th. He could come that day but I think the safer day probably  
8 is the 29th. But he'll need to know pretty soon. I said I would  
9 try to get back to him today about whether we could firm up that  
10 date. So that be would be the 29th, Wednesday.

11 And if for some reason the government is not finished,  
12 I would like to ask the permission to call him out of turn.

13 THE COURT: Mr. Harding, who will be the identification  
14 witness on the Stop Snitching? Is that Reynolds or who is that?

15 MR. HARDING: Rodney Hayes, Your Honor.

16 THE COURT: Hayes? And who's your next two longest  
17 witnesses, apart from the medical examiner and the ballistics?  
18 Do you have any more long witnesses? Lay witnesses?

19 MR. HARDING: I think that both the homicide detective  
20 for the Wyche brothers murder and for the Tonya Jones-Spence  
21 murder will be fairly lengthy witnesses. And we may get to both  
22 of those next week.

23 THE COURT: Okay. And then, so we have Niedermeyer and  
24 the Baltimore County detective?

25 MR. HARDING: Yes.

1 THE COURT: And then the medical examiner, the  
2 ballistics on the two gun thing.

3 MR. HARDING: We have a number of officers in the Tonya  
4 Jones-Spence murder yet.

5 THE COURT: Right. But they'll be pretty, like the  
6 ID's and so forth.

7 MR. HARDING: We have some more civilian witnesses as  
8 well, Your Honor.

9 THE COURT: On the Tonya Jones-Spence?

10 MR. HARDING: Yeah. And just looking at the, I don't  
11 know why Ms. Rhodes has picked October 29th as the day when she  
12 thinks she'll be able to call this witness. That would only give  
13 us five more days to complete our case. And even though I  
14 predicted that we were more than half done, it's taken us ten  
15 trial days to get halfway done. So I think Ms. Rhodes may be --

16 THE COURT: Too optimistic?

17 MR. HARDING: Yes.

18 THE COURT: Ms. Rhodes, is that week written in stone  
19 or are you trying to figure out which day that week you should  
20 have your witness come in? Because it does sound like it would  
21 probably --

22 MS. RHODES: I think the latest day that week. But the  
23 only, the problem my witness has is that the following week he is  
24 not available until Thursday, the 6th of November.

25 THE COURT: I think that makes much more sense.

1 MS. RHODES: Okay. That's fine.

2 THE COURT: Yeah. Schedule him on the 6th. What I  
3 think my intention is, that to the extent, I mean, we'll have a  
4 better sense of when the government's going to rest, obviously,  
5 after next week. By the time we break for that week long recess,  
6 I think we should have, you agree, Mr. Harding, we should have a  
7 pretty good idea of how many additional days we're going to need?

8 MR. HARDING: I think we'll have a much better idea  
9 than we do right now.

10 THE COURT: Right. So it's my hope that before we  
11 break on the 16th next week we'll be able to map out something  
12 that's reasonably, reasonably clear to us going forward. And so  
13 I think November 6th is probably a very good bet for you.  
14 Clearly, to the extent that any defendant intends to call  
15 witnesses, again, assuming there's no objection once we get past  
16 the government's case in chief, we can sort of, you know,  
17 hopefully mix and match and people can call witnesses as they may  
18 be available, as we may be able to accommodate them, and lessen  
19 the inconvenience to them.

20 To the extent that the government rests and we have,  
21 say, a day, you know, with no witnesses, I won't have any  
22 problem, and I'm sure the jury won't any problem, taking a day  
23 off while defense witnesses are lined up and so forth.

24 I don't know how much, if any, argument will be  
25 necessary and/or appropriate on a Rule 29 motion, but my

1 suspicion is counsel are going to want to be heard. And so it  
2 may well be that we're going to have a full half day of argument  
3 on a Rule 29 motion.

4 So I think we've got some flexibility built in. And I  
5 think that the November 6th date, Ms. Rhodes, is pretty good for  
6 you, notwithstanding our somewhat strong disagreement on  
7 yesterday. I certainly hesitate to put a defense witness in  
8 before the government has rested because that creates all kinds  
9 of additional complications. But I won't say I'd never do it.  
10 But it would be pretty extraordinary.

11 So I'm hoping you can get your witness scheduled for  
12 the 6th. We'll get to him or her on the 6th.

13 Yes, Mr. Lawlor.

14 MR. LAWLOR: Judge, I think I know the answer to this.  
15 But is the Court committed to sitting on the 7th? The only  
16 reason I ask is that I was scheduled, without consultation, to  
17 argue a case in the DC Circuit that day. And I could move it but  
18 I just think that, speaking for some of my older colleagues, five  
19 days in a week seems a little long.

20 THE COURT: Well, I'm committing to half a day that  
21 day.

22 MR. LAWLOR: I can move it. But I just didn't know if  
23 the Court is, or are we definitely sitting that day?

24 THE COURT: I am definitely sitting that day, except,  
25 except as I just said, if, let's say, the government were to rest

1 on the 5th or the 6th, then I would not see any reason why I  
2 should bring the jury in on Friday the 7th. But --

3 MR. LAWLOR: Can I ask you --

4 THE COURT: But if, you know, otherwise, if we're into  
5 the defense case and defense has some witnesses and if we're  
6 still in the government's case in chief, yes, I'm committed to  
7 sitting on Friday the 7th for a half a day.

8 MR. LAWLOR: I'll work it out then. Thanks, Judge.

9 MR. KURLAND: Judge, I just have a question on Election  
10 Day.

11 THE COURT: Certainly.

12 MR. KURLAND: This can probably wait for a definitive  
13 answer until next Tuesday. But if the Court would have an idea  
14 whether the Court's going to go either, start in the morning,  
15 what time would it be in morning? I'm just trying to figure out  
16 logistically if I need to be in Baltimore for that night. On  
17 Election day, what time would the Court start in the morning?

18 THE COURT: Oh, I have it in the calendar for 10:00. I  
19 could make it, I can make it --

20 MR. KURLAND: Let me doublecheck. I don't want to take  
21 too much of the Court's time.

22 THE COURT: I can make it 10:30 to 2:30 or something,  
23 or 10:30 to 3.

24 MR. KURLAND: I'll try to get that firmed up. Thank  
25 you, Your Honor.

1                   THE COURT: All right. Thank you very much, counsel.  
2       We're in recess until Tuesday morning, 9:30.

3                   (Conclusion of Excerpt.)  
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REPORTER'S CERTIFICATE

I, Mary M. Zajac, do hereby certify that I recorded stenographically the proceedings in the matter of USA v. Willie Mitchell, et al., Case Number(s) AMD-04-029, on October 8, 2009.

I further certify that the foregoing pages constitute the official transcript of proceedings as transcribed by me to the within matter in a complete and accurate manner.

In Witness Whereof, I have hereunto affixed my signature this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Mary M. Zajac,  
Official Court Reporter



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